

A Majority of One: A Summary and Analysis of *An Oral History of Colonel Denise K. Vowell (Retired), United States Army, 1973–2006*¹

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*A judicial opinion . . . is ideally a product not only of analysis but also of experience, which is why brilliant twenty-five-year-olds are not judges. The twenty-five-year-old can do the analysis, but he cannot articulate the judge's experience.*²

Introduction

Over the past twenty-four months, as the evolutionary arch of military justice practice cambers toward a paradigm that is more judicial and civilianized, the challenges faced by practitioners are more dramatic than at any time in a generation. An existential threat to the current command-centric system arises, in part, from a political current that sees the commander's role in good order and discipline as inadequate, and calls into question the ability of the system to mete out justice most particularly with issues like sexual assault.

This is nothing new. In the years following WWII, the 1950 Uniform Code of Military Justice (UCMJ) was introduced in response to political dissatisfaction with military justice under the Articles of War. It established rules and procedures for courts and pretrial investigations, and detailed rights of appellate review. Nearly thirty years later, with the advent of the war in Vietnam, the 1968 amendments to the UCMJ were implemented, dramatically expanding the rights of Soldiers and the establishment of a more professional and institutionalized judiciary.³ By 1980,

the Army created the Trial Defense Service (TDS), an independent criminal defense bar, moving the system further still away from the influence of commanders. The recent congressional focus changes the way the military conducts key pre-trial investigations, what advice and authority is available to commanders, the prosecution of complex sexual assault cases, and the legal services to which victims are entitled.⁴ Some have advocated sentencing guidelines for the military⁵ and tenured judges with fixed terms of office.⁶ Most controversial has been the effort, which received majority support in the U.S. Senate in 2013, to remove commanders almost entirely from the military process.⁷

What is lost in the discussion is what critics are NOT saying, particularly with regard to the quality and efficacy of the modern military judiciary—now well into its fourth decade—which functions independently and impartially within the command-centric military justice system.⁸ For all the scrutiny and legislative initiatives about the role of commanders and quality of legal training and expertise, the contrasting absence of any meaningful discussion about the competence and capacity of the Army judiciary in dealing with high-profile litigation is quietly profound. So too are

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¹ Major Temi Anderson, Major Aaron Lykling & Major David O'Dea, The Judge Advocate General's Legal Center and School, Charlottesville, Virginia, *An Oral History of Denise K. Vowell, Colonel (Retired), U.S. Army 1973–2006*, (Nov. 2012) [hereinafter *Oral History*].

² RICHARD A. POSNER, REFLECTIONS ON JUDGING 46 (2013). Judge Posner has served on the U.S. Court of appeals for the Seventh Circuit since 1981, and is a senior lecturer at the University of Chicago Law School. He is widely considered among America's premier jurists.

³ See The Judge Advocate Gen.'s Sch., U.S. Army The Background of the Uniform Code of Military Justice, (1959), available at http://www.loc.gov/r/rfd/Military_Law/pdf/background-UCMJ.pdf (last visited Sept. 20, 2014).

⁴ See The Military Justice Improvement Act of 2013, S. 1752, 113th Cong. (2013–2014), available at <https://beta.congress.gov/bill/113th-congress/senate-bill/1752> (last visited Sept. 20 2014) (requiring, among other things, that each military Service establish a centralized system to convene general and special courts-martial and detail judges and members). See generally Charles "Cully" Stimson, *Military Sexual Assault Reform: Real Change Takes Time*, HERITAGE FOUNDATION, <http://www.heritage.org/research/reports/2014/03/military-sexual-assault-reform-real-change-takes-time> (last visited Sept. 19, 2014).

⁵ See Major Steven Immel, *Military Sentencing Guidelines*, 165 Mil. L. Rev. 159 (2000); UCMJ art. 56 (2012) amended by Nat'l Def. Authorization Act, H.R. 3304 (2014).

⁶ COX COMM'N, NAT'L INST. OF MILITARY JUSTICE, REPORT OF THE COMMISSION ON THE 50TH ANNIVERSARY OF THE UNIFORM CODE OF MILITARY JUSTICE 2 (May 2001) [hereinafter COX COMM'N], available at http://www.loc.gov/r/rfd/Military_Law/pdfCox-Commission-Report-2001.pdf (last visited Sept. 19, 2014).

⁷ See Helene Cooper, *Senate Rejects Blocking Military Commanders from Sexual Assault Cases*, N.Y. TIMES, Mar. 6, 2014, http://www.nytimes.com/2014/03/07/us/politics/military-sexual-assault-legislation.html?_r=0 (last visited Sept. 20, 2014).

⁸ See UCMJ art. 26 (2008) (military judges are directly responsible to The Judge Advocate General or her designee); *id.* art. 37 ("No authority may censure, reprimand or admonish . . . a military judge . . . with respect to the findings or sentence adjudged by the court, or with respect to any other exercises of its or his functions in the conduct of proceedings."); see also *United States v. Graf*, 35 M.J. 450, 463 (C.M.A. 1992) ("The Uniform Code of Military Justice provides substantial independence and protection for military judges, both trial and appellate, despite their subordinate position in the military hierarchy.").

the remarkable military jurists who brought it to where it is today. This matters because at time when the integrity of the system is brutally scrutinized as unfair to certain classes of victims and defendants, the successful development of an Army judiciary that is widely deemed experienced, expert, and as good as its civilian counterpart is a vitally important institutional accomplishment.

Colonel Denise Vowell, the former Chief of the Army Trial Judiciary and the first female officer to serve in that position, was among that small but dedicated cohort who brought it to where it is today.⁹ During a thirty-two year career, Colonel Vowell distinguished herself as the first true lioness of the Army legal corps. Her career spans the Vietnam War; the Women's Army Corps (WAC); service as the first female staff judge advocate (SJA) (supervising legal advisor) of an Infantry division; the first female division SJA to serve in a contingency operation (Bosnia); Chief of the Army Torts Branch; assignments as both a trial and appellate judge, and concluding as the Chief Trial Judge for the Army Judiciary. Despite widely recognized accomplishment in numerous legal and leadership positions, Colonel Vowell's unique and defining legacy remains her relentless and unapologetic advocacy and cultivation of an Army judiciary filled with proven leaders and lawyers *experienced* in life and the law, and who by any measure have the capacity and talent equal to any other cohort within the Army or broader legal profession.

Her ability to change the narrative on what military trial judges should be, how they are selected and assigned, and the professional and educational opportunities they should have affords her a substantive legacy meriting study for what it says about the Army, and the ability of a single leader to achieve meaningful institutional change. It is also a lesson in the experience of female leadership in the Army legal services, from the late 1970s, when there were hardly any, to today when all real or perceived ceilings have clearly been shattered, capped off by the 2013 appointment of the Army's first female Judge Advocate General (TJAG).¹⁰

In noting Vowell's intellectual acumen and vocal commitment to civic principle and social justice, a high school teacher once observed that, "Denise is never in a minority; she is a majority of one."¹¹ She was self-assured, confident, assertive, and committed to the certain moral righteousness of her actions. An unapologetic feminist,¹² her

personal and professional narrative is the story of a woman who beat the odds to become the first in her family to attend college; who was informed and defined by her experience in the turbulent social and political environment of the late 1960s; and who went on to enlist and serve as one of the Army's top leaders and jurists.

Denise Vowell was that rare Army lawyer who mattered in an institutional way, and whose contributions to military justice survive in a professional culture forever improved through her efforts. This summary and analysis of her 2013 Oral History attempts to capture the narrative of her life experience, and how it shaped and informed her professional contributions to the Army. It is a story worthy of study for its lessons of one remarkable officer's personal journey in Army law, and the development of the Army Judge Advocate General's Corps more generally.

Family and Upbringing

Colonel Vowell was born during the summer of 1952 in Flint, Michigan, one of five children. The family settled in the area following her father's discharge from the Marine Corps, and like so many others in the greater-Detroit area, her parents made a living in support of the automotive industry, an experience that left a profound impression on her. She recalls that by age twelve, "I had decided that I was never going to work for General Motors and I was never going to marry anyone who did."¹³

Important, however, was her father's work as a committeeman for the United Auto Workers union, where he helped represent workers in disputes with management: "those workers accused of smuggling out a whole car one part at a time. . . or caught in possession of a General Motors flashlight in their trunk."¹⁴ Her father would come home in the evenings and recall the stories and the struggles of workers with management. Her mother also worked full time for General Motors in an administrative office, at a time when mothers with five children rarely worked outside the home. From those two role models, a father who advocated on behalf of employees and a mother who successfully managed work and family, Vowell developed the capacity for multi-tasking and "the sense of fighting for justice. . .," which would later play such an important role in her professional life.¹⁵

This early and affirmative awareness of equitability and fairness observed through her father's union activity soon manifested itself into action. During her later years in high school, Vowell was actually expelled from school for distributing information on birth control in response to the

⁹ See generally Colonel George R. Smawley, *In Pursuit of Justice, A Life of Law and Public Service: United States District Court Judge and Brigadier General (Retired) Wayne E. Alley (U.S. Army, 1952–1954, 1959–1981)*, 208 MIL. L. REV. 213 (2011) (providing a look at the history and career of another notable military judge).

¹⁰ Lieutenant General (LTG) Flora D. Darpino, U.S. Army, The 39th Judge Advocate General, 1 September 2013–present. Lieutenant General Darpino followed Vice Admiral Nanette M. "Nan" DeRenzi, U.S. Navy, and the first female military Service TJAG, promoted on July 20, 2012.

¹¹ Oral History, *supra* note 1, at 21.

¹² Interview with Denise K. Vowell (Colonel, U.S. Army (Retired)), at the Pentagon in Arlington, Va. (July 10, 2014) [hereinafter Vowell Interview] (on file with author).

¹³ Oral History, *supra* note 1, at 4.

¹⁴ *Id.* at 5.

¹⁵ *Id.* ("and don't work for General Motors").

appalling pregnancy rates among her classmates.¹⁶ She made and wore black armbands in solidarity with other students following the four student deaths at Kent State University, and distributed them to others.¹⁷ At one point, she even threatened her high school administration with legal action via the American Civil Liberties Union (ACLU) following the expulsion of a friend for violation of the dress code, which made him instantly subject to the draft. The friend later died while serving in Vietnam.¹⁸

Indeed, Vowell maintains that the Vietnam War was a defining event for her and informed her thinking about the changes in American society going on at the time.¹⁹ She remembers,

Flint was a racially divided community. The '68 riots in Detroit destroyed the city for years and years. I grew up listening to Dr. King's speeches, the whole Civil Rights movement, and I saw it as a women's rights movement, as well. If you think back, the suffragettes really got their start in the anti-slavery movement, historically. So I think those things got me mobilized about politics and securing the right to vote for 18-year olds. I vividly remember Kent State. I stayed up all night watching the '68 Democratic Convention . . . and following the trial of the Chicago Seven; that fascinated me. That was one of the things that really got me interested in law, watching that trial and watching the defense so masterfully manipulate the judge into error.²⁰

The other quality she received from her parents was a genuine love of travel and the outdoors. During her childhood, Vowell and her four siblings spent their recreational time hunting, fishing, and backpacking along the lake near their home in Holly, Michigan. In middle school, she participated in the National Rifle Association's

safe hunter class and went deer hunting for the first time.²¹ That love of the outdoors would later inform her personal and professional life, and was instrumental in preparing her for some of the discomforts occasioned by the Army.

Vowell's early years progressed as so many do with a focus on education and family,²² a period in which she describes herself as among the "raven-tressed kids because I was the bookworm and the tom-boy and very much a rebel."²³ She flourished in school and kept herself busy with a mix of political activism, 4-H, the Tolkien Society of America,²⁴ and a paid newspaper column for local and regional papers that she began writing in her freshman year.²⁵ She even tried to integrate her high school cross-country team, which failed when they were unable to secure a women's coach.²⁶

Throughout her teenage and high school years, Vowell's parents gave her the room to run her own race, express her concerns for social justice and politics, and assert herself personally and publically but not without a bit of friction. She remembers,

bitter arguments over school busing and Vietnam and anti-war protesters . . . and something about lying down in front of a school bus or something—huge arguments. But on the other hand, they supported me in things like my Mom getting me back into school [after an expulsion]. . . . I don't think they quite knew what to do with me.²⁷

In the end, her parents had afforded her the example of what was good, and Detroit, what was not. Vowell recalls,

In this town if you were a guy, when you graduated from high school you went to work for General Motors, you joined the Army, or you went to jail. And if you were female, you got pregnant and got married or got married and got pregnant. The sequence of the latter was kind of up to you, or luck. I wanted out of Holly very badly.²⁸

¹⁶ *Id.* 15–16. "When I graduated ten percent of my classmates were either pregnant or a parent; ten percent. This is a small town; not much to do and plenty of places to go unsupervised." *Id.* at 16.

¹⁷ *Id.* at 19. The 1970 shooting of thirteen Kent State University students by Soldiers from the Ohio National Guard, killing four and wounding nine. See Jerry M. Lewis & Thomas R. Hensley, *The May 4 Shootings at Kent State University: The Search for Historical Accuracy*, OHIO COUNCIL FOR THE SOC. STUD. REV., vol. 34, no. 1, Summer, 1998, at 9-2, available at <http://dept.kent.edu/sociology/lewis/lewi.htm> (last visited June 15, 2014) (published in revised form).

¹⁸ Oral History, *supra* note 1, at 17.

¹⁹ *Id.*, at 18.

²⁰ *Id.* at 18–19. The Chicago Seven refers to the trial of political activists accused of inciting riots during the 1968 Democratic National Convention. See generally *The Chicago Seven Conspiracy Trial*, summarized at the historical page for the Federal Judiciary, at http://www.fjc.gov/history/home.nsf/page/tu_chicago7_narrative.html (last visited June 15, 2014).

²¹ Oral History, *supra* note 1, at 6.

²² *Id.* at 9–11.

²³ *Id.* at 9.

²⁴ *Id.* at 22. Vowell recalls of the JR Tolkien Society, "[W]e published magazines; we would write our own work, poems, poetry, short stories, short plays, art work, [and] run them off on a mimeograph." *Id.*

²⁵ *Id.* at 11. "The editor of the local newspaper gave me a job when I was a freshman. I got paid two dollars for my column. I wrote a weekly column on the high school for the newspaper and then he would occasionally pay me 10 cents an inch for feature stories that I would write." *Id.*

²⁶ *Id.* at 13.

²⁷ *Id.* at 20.

²⁸ *Id.* at 9.

Education

The journey out of Holly led Vowell to become the first person in her family to attend college, a process that her parents supported but which she navigated almost entirely alone.²⁹ She entered Illinois State University in 1970 with the intention of becoming a teacher.³⁰ The university, like Vowell, was in the process of reinventing itself from its narrow focus on producing educators to become a broader, more relevant and modern university. This created opportunities for students interested in participating in the school's evolving narrative and Vowell was quick to join the debate.

She was elected to the academic senate and, not surprisingly, became fully engaged in campus politics, including speakers bureaus, faculty and administration search committees, and budgeting.³¹ Over the course of a couple years, her leadership at the university afforded her the opportunity to interact and moderate events among civic leaders of the day, including Betty Frieden, Phyllis Schaflly, Ralph Nader, and Senator George McGovern, who offered her a position on his 1972 presidential campaign staff, which she declined.³²

Vowell was also politically active in the local community, where she served on the town zoning commission and ran unsuccessfully for the county board of supervisors.³³ In-between, she worked to support herself with jobs as a paraprofessional in the university counseling department, a waitress, a library aide, and a breakfast cook in the men's dorm.³⁴ She recalls the pride of being able to manage on her own but that money was tight.

Academically, her studies in the social sciences were the ideal intersection of Vowell's driving interests in politics' "ability to change peoples' lives for the better," and philosophy's lessons in arguing both sides of a matter, how to critically analyze issues, the nuances of facts, and the art of public speaking.³⁵ Those lessons and cognitive skills, in particular the discipline of research and fully considered facts and theories, later became a hallmark of her leadership and judicial style and temperament. As a chief judge, appellate counsel, and senior defense counsel, she recalls that, "When one of my [military] subordinates would come in with question, I [asked them] well, what did you look at? Have you thought about this?" As a trial judge she was

famous for saying, 'let's get the book out.
Does everyone have their books? Okay.

²⁹ *Id.* at 21.

³⁰ *Id.* at 22.

³¹ *Id.* at 25.

³² *Id.* at 26.

³³ *Id.*

³⁴ *Id.* at 27.

³⁵ *Id.* at 32–33.

We're in recess. Where are your manuals? Let's open them—what does Rule 1001(b)(5) say? . . . where do we fit in that . . . tell me why this is not here, counsel.' Because in the military, far more than anywhere else, trial judges play that role. The training role of turning recent law school graduates into litigators and sometimes you learn from your very big mistakes."³⁶

Entry into the U.S. Army Women's Corps (WAC) and the Military Police Corps, 1973–1976

*Lieutenants with no tact become colonels with force of character; you have the job.*³⁷

College was not an easy experience for Vowell, who recalls "struggling financially—working three jobs, attending school full-time, being very involved in outside campus activities, and sleeping three or four hours a night."³⁸ Although unapologetically opposed to the war in Vietnam, she never considered herself anti-military, as others in that movement were, and so was open to the idea of joining the armed forces given the many benefits and opportunities it afforded.³⁹ So, during her junior year in 1973, Vowell enlisted in the U.S. Army via the Women's Army Corps College Junior program ("CJs"). This followed a conversation she had with a young WAC recruiter, Lieutenant Judith Zier, who she met at a job fair.⁴⁰

They would pay you as an active duty corporal and would commission you as a WAC second lieutenant upon graduation with a two-year obligation. I thought, that's the GI Bill for law school. . . and my last year in college without having to work [and the freedom] to do the things I would like to do academically.⁴¹

But the decision was one she made alone, and it did not receive much support from those close to her. She lost a very serious relationship over it and still recalls her father's comment that, "women Soldiers are either lesbians or prostitutes, which are you?"⁴² A sentiment echoed also by one of her college professors.⁴³ But she needed the money

³⁶ *Id.* at 35.

³⁷ *Id.* at 59. Major General Clyde W. Spence, Jr., then Chief of Staff for 1st Cavalry Division, describing Vowell in his decision to select her as the Commander, Division Headquarters Company.

³⁸ *Id.* at 36.

³⁹ *Id.* at 35.

⁴⁰ *Id.* at 36, 40.

⁴¹ *Id.* at 37.

⁴² *Id.*

⁴³ *Id.*

and, undeterred by the cynicism, drove forward with the enlistment and was surprised by how much she thoroughly enjoyed it, both for its organization and, importantly, the military's special place in history as a vanguard for social equality. Vowell remembers,

I was amazed—I liked those women. I liked the structure. I liked what they were doing. I liked the classes. [The program] was basically a four-week basic training session except they treated us better than the recruit private. [T]his was 1973—the great WAC expansion. The draft had ended, and they couldn't get enough men. This was the only place in America where women got the same pay for the same work. The military can be a great equalizer. I mean in the 1970s it was the only place in America where white men worked for black men. That was a big change.⁴⁴

She completed her senior year in college with honors, and was commissioned with a fellow female student immediately following graduation in 1974. They were put on excess leave for the summer, which Vowell divided between waitressing at a truck stop and hunting elk in Colorado with friends, followed by backpacking from the northern shore of Lake Michigan up to the Tahquamenon River.⁴⁵

In the early fall, she reported for active duty to the WAC Center at Fort McClellan, Alabama. The class became one of the first to receive branch assignments akin to their male counterparts in career fields like Military Intelligence, the Adjutant General's Corps, and the Military Police Corps.⁴⁶ This was a significant and, for some, an emotional period of transition for the officers of the Women's Army Corps, with some older officers experiencing “a sense of separation who were saddened by its demise.” But younger officers, including Vowell, were eager to leave behind the WAC to its pending dissolution and associate with conventional Army service branches.⁴⁷ She recalls,

In the past, WACs were primarily in the administrative fields. There were some that were in others, but the branches that had opened fairly recently [to women] were things like the Military Police and Ordnance—so they brought representatives from the branches to come down and talk to us. And most of [them] brought a male lieutenant colonel and a

female lieutenant who turned on and off the lights and flipped the slides, which was not particularly impressive. . . . There were two branches that were different. The Ordnance Corps actually brought women who helped present the briefing; they were a part of it. The MP Corps didn't bring any women at all and commented [that their] women were all out doing jobs. They didn't assign women to turn out the lights and flip slides.⁴⁸

So Vowell - who had opposed the war, fought for social justice, worked with the Illinois State University police, and volunteered at a rape crisis center - became a Military Police officer. Following the WAC basic course, she reported to the MP school at Fort Gordon, GA,⁴⁹ where she was one of only ten female officers in her fully integrated basic course.⁵⁰ Vowell recalls that the women did exceptionally well in the MP branch courses, in part, because they were motivated to succeed, in contrast to many of the men who “sort of navigated to ROTC to get out of the draft and now their payback was coming due. . . .”⁵¹

Following completion of the MP officer basic course, Vowell was assigned to Fort Knox, KY, where she was the second female to be assigned to the Provost Marshal's Office (the provost marshal had fired the first one).⁵² It was a good introduction to the Army, with progressive leaders who took her under their wing and where she developed the skills and sense of humor required to deal with men in a male-dominated military culture.⁵³ She would need it. In the post-Vietnam era, the Army was still acculturating to the idea of female leaders. Several years later, while serving as the Security Platoon Leader for the 1st Cavalry Division, she remembers one memorable exchange when a G3 (Operations) lieutenant colonel told Vowell that she “even sounds like a Soldier” to which she retorted, “My God, Sir, I AM a Soldier!”⁵⁴ She recalls that the female officers:

had to be better than the guys. You had to look better, act better, be smarter, and not . . . be afraid to [be confrontational] . . . [And as she would explain to some of the female enlisted Soldiers], you cannot use being a woman as an excuse. ‘Well, I have cramps so I can't work today. Too bad, you know, the Russian hordes had just poured through the Fulda Gap. I don't

⁴⁴ *Id.* at 38.

⁴⁵ *Id.* at 39.

⁴⁶ *Id.* at 40–41.

⁴⁷ Vowell Interview, *supra* note 10.

⁴⁸ Oral History, *supra* note 1, at 41.

⁴⁹ The U.S. Army Military Police School moved to Fort McClellan in July 1975.

⁵⁰ Oral History, *supra* note 1, at 42.

⁵¹ *Id.*

⁵² *Id.* at 43.

⁵³ Vowell Interview, *supra* note 10.

⁵⁴ *Id.*

think they are interested in whether you have cramps or not.’ So you had to enforce those standards, but live them yourself.⁵⁵

Living the standard for female leaders in the mid-1970s also meant operating within an Army that some deemed an instrument of social change with regard to gender equality, something Vowell considered a “false dichotomy so long as leaders made rational choices.”⁵⁶ In her mind, the military had a primary mission related to national defense that, while not unaffected by social and political currents, should not be defined by them. She cites, for example, General Eisenhower’s early opposition to female integration in the military prior to World War II and his change of heart upon its conclusion when women Soldiers had clearly proven their worth as combat multipliers.⁵⁷ Social evolution had to complement the mission, conditioned in part upon evolving social acceptance for change whether concerning integration of African Americans, women, or more recently gay and lesbian military members.

I do believe that the military can be an instrument of social change, but there has to be a point. If we had tried to integrate openly gay people when I enlisted it would have failed miserably, I think. But [now] because society has changed somewhat, the younger the person you talk to the more accepting they are going to be of gay and lesbian individuals. I know that two of the women in my WAC officer basic class and my MP Officer basic class were gay. I absolutely know. I would have far rather shared a foxhole with them than with most of the men, because at least I knew they would have my back and not because they were interested in me sexually, but because they were focused on accomplishing the mission. . . .

So there is a balance that has to be struck, but to some extent I think the military can be out in front of it.⁵⁸

⁵⁵ Oral History, *supra* note 1, at 44.

⁵⁶ *Id.* at 45.

⁵⁷ *Id.* at 46.

⁵⁸ *Id.* at 46–48. Vowell notes the early opposition of male Soldiers in the Pacific to the assignment of women to that theater of war, and how it dramatically dissipated after women were integrated there, and of the recognition of their value to the mission once the opportunity was afforded them. Vowell offers her opinion that, “in terms of racial integration, sexual integration, gender integration, I don’t think we’ve harmed our military by any of them and we’ve made not only our Army, but our nation, stronger.” *Id.* at 49. See generally MATTIE E. TREADWELL, THE WOMEN’S ARMY CORPS, UNITED STATES ARMY IN WORLD WAR II (1954); BETTIE J. MORDEN, *The Women’s Army Corps, 1945–1978* U.S. Army Center of Military History (CMH) 1990, available at <http://www.army.mil/cmh-pg/books/wac/index.htm> (last visited June 18, 2014).

In 1975, after her short but successful tour at Fort Knox, Vowell was assigned to the 1st Cavalry Division, at Fort Hood, TX, where she served in the division’s military police company. It was there she experienced the limitations of gender integration and the narrow developmental opportunities for female MP Officers, particularly with regard to field training and leadership— the “MP company didn’t take women to the field because it was too much trouble.”⁵⁹

As a female division MP platoon leader, she was prohibited from serving with the three platoons aligned with maneuver (combat) brigades and so was assigned to the security platoon.⁶⁰ But that didn’t stop her. During one memorable division field exercise, a brigade commander demanded the division provost marshal send forward an MP platoon leader. Short on options, he sent Vowell.

I still remember the look on [the brigade commander’s] face when I walked into his [tactical operations center]. . . . He looks at me and says, “but, but, but, you’re a woman!” “Yes,” Vowell responded, “been one all my life. I’m also your brigade provost marshal; now what do you want me to do?” He burst out laughing.⁶¹

Still, the awareness of the limitations on developmental career experience for female MP Officers, and its cultural undertone, was one of the things that led Vowell to consider the move from the MP Corps to another branch of the Army.

I looked around and thought, you know, they are never going to let me be the Provost Marshal General. I mean, there are limits on what they’re going to let women do in the MP Corps. . . . I don’t think that I’m limited as an Army attorney the same way I am by attitudes and prejudices. There are still going to be some, but it’s going to be better.⁶²

Further motivating her to consider the legal field was the lack of MP branch leadership she experienced at 1st Cavalry Division, particularly the provost marshal, who she remembers as a “miserable excuse for a human being.”⁶³ In one episode, Vowell was in charge of building a prisoner of war camp during a force-on-force exercise between 1st Cavalry Division and 2d Armored Division. During the course of the operation, and pursuant to authorities in Army policy, she ordered the notional prisoners to dig their own

⁵⁹ Oral History, *supra* note 1, at 50.

⁶⁰ *Id.* at 57; Vowell Interview, *supra* note 10.

⁶¹ Oral History, *supra* note 1, at 57.

⁶² *Id.* at 49–50.

⁶³ *Id.* at 52.

slit trenches, which led to one of them being medically evacuated due to back spasms.⁶⁴

For this, the provost marshal openly reprimanded Vowell on the site and in front of her troops on the misinformed grounds that she was somehow abusing the Soldier in his role play as a prisoner of war. Vowell was furious, and remembers,

I got in my jeep and I drove to where my company commander was. I took my .38 [pistol] out of my holster and [removed] all five rounds and I said, “Here sir, put these in the safe or I’ll shoot the son of a bitch.” He didn’t ask me what son of a bitch I was talking about, and just sat me down and fed me M&Ms until I calmed down.⁶⁵

That said, she also continued to encounter wonderful leaders who demonstrated not only superior leadership but also a clear willingness to utilize Vowell’s professional capacity without regard to her sex. For example, shortly after the POW field incident Vowell was selected to serve as the Executive Officer for the 1st Cavalry Division Headquarters Company, where she was responsible for the operation of the headquarters, including its battle tactical operations centers, quartermaster support, and associated support.⁶⁶ She replaced a male officer who had been relieved by the commanding general, who was reported to have said, “This time get a good officer, and don’t rule out a woman.”⁶⁷

She was also later selected to command the Division Headquarters Company with over 400 Soldiers,⁶⁸ and, thereby, became one of the first female company commanders in the Regular Army (as opposed to the WAC). It was a job she did not want but grew to love in large measure because of the quality of the noncommissioned officers on her staff, recalling fondly that “those NCOs were the people that kept me out of jail.”⁶⁹ She enjoyed almost everything about being in the 1st Cavalry Division—the Soldiers, the field exercises, even the assorted cavalry horses she had on her property books.⁷⁰ And yet, despite success as

a platoon leader, executive officer, and company commander, her experience caused her to do some soul searching.

I looked around the division at a command and staff meeting one day and said, “Who would I want to be here when I grow up?” And I listened to people talk and watched and I was the only [woman in the room]. And the guy that was most listened to, besides the CG, was the division SJA; a guy named Charlie White. All of my mentors have been men, because there weren’t any women. And Charlie was certainly one of those . . . he helped me put my [Funded Legal Education Program] application together. . . . I thought, I want to be Charlie when I grow up. I want to be the SJA of the 1st Cavalry Division.⁷¹

Law School, Entry to the Judge Advocate General's Corps, and Fort Bliss, 1977–1985.

Vowell was accepted into the Judge Advocate General’s Corps FLEP program in 1977, and entered law school at the University of Texas School of Law (UT) the following spring.⁷² Charlie White was the one who called her with the good news of her selection for the program.⁷³ She found the contrast from the demands of company command a relaxing one, and while characteristically studious and active in moot court, the board of advocates, and related criminal law course work, she also embraced the balance school afforded and managed her days in a way so as not to “cut into her M*A*S*H rerun time.”⁷⁴ Although there were few FLEP officers at UT, the law school had a significant and diverse veteran population with which Vowell formed a military law society and a military law association, a forum to talk about issues and “an excuse to drink beer on student fee money.”⁷⁵

In-between semesters, Vowell returned often to Fort Hood where her husband—also an active duty officer—was stationed. She did developmental training with the 1st Cavalry Staff Judge Advocate’s (SJA) office, reviewed records of trial, participated in military court cases, and otherwise sought and received the training necessary for the practice of law with a focus on advocacy.⁷⁶ She recalls the post-trial work for the SJA office was particularly valuable.

mine until it got stolen at the officers’ club one night. [The] Claims office wouldn’t pay my claim.

⁶⁴ *Id.* at 55.

⁶⁵ *Id.*

⁶⁶ *Id.* at 56.

⁶⁷ *Id.*

⁶⁸ *Id.* at 65.

⁶⁹ *Id.* at 60.

⁷⁰ *Id.* at 58, 62. Vowell recalls,

I owned the horses. I had horses on my property books. The Cavalry was the land of many hats at that time. The Pony Platoon all wore their—the horse platoon all wore their black Stetsons. The MP Company actually wore pearl grey Stetsons. I had

Id. at 62.

⁷¹ *Id.* at 61–62.

⁷² *Id.* at vi (Curriculum Vitae).

⁷³ *Id.* at 63.

⁷⁴ *Id.* at 68.

⁷⁵ *Id.* at 67.

⁷⁶ *Id.* at 70–72.

I basically read records of trial, dictated a summary of the evidence, analyzed any legal issues that were raised and then looked for the ones to spot. . . . It forced me to look at what looks good [and what] you could learn from a record about how to do things or how not to do things, and to issue spot.⁷⁷

As for academics at UT, she enjoyed civil procedure and conducted independent study projects focused on military law, including the military rules of evidence, history of search and seizure, and Fourth Amendment warrant requirements.⁷⁸ She was active in advocacy organizations, and served as the Note and Comment Editor for the *American Journal of Criminal Law*.⁷⁹ In all, Vowell remembers that she was focused on doing criminal work where she could leverage her unique experiences as a military police officer and company commander.⁸⁰

She graduated from law school with honors in 1981, and later joined approximately 100 other officers in the 97th Army Judge Advocate Officer's Basic Course held at The Judge Advocate General's School adjacent to the University of Virginia School of Law in Charlottesville.⁸¹ She spent the period between the bar exam and the Basic Course at the Fort Bliss SJA office, working in client services for Captain Scott Black, who later became The Judge Advocate General of the Army (TJAG).⁸² Vowell's excitement and anticipation at this first step to an Army legal career were immediately tempered when she learned that she was pregnant with her first child. She recalls: "I thought my career was over. The only other female JAG I knew before I got to Fort Bliss . . . had three little girls and had been twice passed over for major, and she blamed that on her having children; . . . it is what things were like then."⁸³

Years later, Vowell learned that The Judge Advocate General at the time suggested returning her to her basic branch (Military Police) because of the pregnancy but relented after the Chief of the Personnel Branch, Colonel Barry Steinberg, twice asked that she be allowed to stay.⁸⁴ As proof of her capacity and determination, Vowell completed and passed a standard Army Physical Fitness Test (APFT) (push-ups, sit-ups, two mile run) in her fifth month of pregnancy.⁸⁵ She spent the remainder of her three months

or so in Charlottesville coming to terms with the prospect of motherhood - not something she had sought or planned - and how it might alter her professional and personal life.⁸⁶

Following the Basic Course, Vowell returned to Fort Bliss to rejoin her husband, who had been assigned there following completion of a short twelve-month month tour in Korea. She remembers El Paso as a nice city with easy access to a university, concerts, sporting events, and an active social life among and between members of the legal community.⁸⁷ "Scott Black's wife, Kim, was the lamaze teacher for the JAG office. Several of us had children right around the same time, so we would play cards, board games, or something with the babies in tow."⁸⁸ In all, it was a very welcoming and supportive community, both personally and professionally.

Vowell's first assignment was as the claims officer and Special Assistant U.S. Attorney for the installation, where her leadership experience and understanding of Texas law proved hugely beneficial. She remembers an SJA office that was very much focused on professional legal service, but did "absolutely little" in the way of Soldier skill development—no field exercises, or organized legal office physical training—with the exception of trial counsel, including Vowell, who elected to train with the units and commanders they advised and supported.⁸⁹

One of those units was the 70th Ordnance Battalion. Vowell recalls long runs with its Soldiers and leadership, followed by sitting around with the commander, Lieutenant Colonel Charles Viall, his executive officer and command sergeant major, talking discipline and military justice.⁹⁰ She bonded easily with the command team, which had lots of women due to the military occupational specialties prevalent in the unit. Years later, when Vowell was promoted below the zone to lieutenant colonel, Viall came to the ceremony where he pressed a set of colonel's rank in her hand for good luck, a testament to the great commander/judge advocate relationship they had enjoyed.⁹¹

In addition to her experience with claims and military justice, Vowell's SJA, Colonel Edwin Wasinger, decided to give her a taste of being a judge. Recognizing that many Soldiers decline to accept non-judicial summary courts martial because the presiding officer is from their unit, Wasinger made experienced judge advocates from his office available to battalion commanders to serve on summary courts throughout the installation. Vowell was one of them, and over the course of two years, she was the summary court

⁷⁷ *Id.*

⁷⁸ *Id.* at 74–76.

⁷⁹ *Id.* at vi (Curriculum Vitae).

⁸⁰ *Id.* at 78.

⁸¹ *Id.* at 79. Currently, The U.S. Army Judge Advocate General's Legal Center and School.

⁸² Lieutenant General Scott C. Black, (U.S. Army, 1974–2009), The 37th Judge Advocate General of the Army (2005–2009).

⁸³ Oral History, *supra* note 1, at 79–81.

⁸⁴ *Id.* at 81.

⁸⁵ *Id.* at 90.

⁸⁶ *Id.* at 81.

⁸⁷ *Id.* at 94.

⁸⁸ *Id.*

⁸⁹ *Id.* at 85.

⁹⁰ *Id.* at 86.

⁹¹ *Id.*

officer for over thirty cases where she served as the “judge, jury, prosecutor, and defense counsel all rolled into one.”⁹²

Toward the end of her tour at Fort Bliss, from 1984-1985, following assignments as a trial counsel and magistrate court prosecutor, she became the chief of military justice. At times she struggled with her infant daughter, Elizabeth, and the tough balance between the obvious professional demands, a dual-military family, and quality child care.⁹³ During this time she also became pregnant with her second child, a son named Andrew. In a spirited recollection of that period, Vowell recalls how she was nearly rejected by the Command and Services Staff School (CAS3) (a nine-week course) at Fort Leavenworth, when she showed up several months pregnant and refused to accept a medical drop from the course.

Despite a medical profile from an OB/GYN that said she could do “anything except skydive or ski,” her CAS3 staff leader remained deeply concerned. Vowell remembers the exchange.

So when I walked in to meet him with my profile in hand, he said, “Well, [this is] a very stressful course and you really should take this medical drop.” [To which Vowell responded] “Look, I’ve got a 20 month old at home, and I’m the chief of military justice for a major military installation that has seen a 300 percent increase in sex crime prosecutions in the last year alone. This course is going to be a piece of freakin’ cake. . . . I will take the diagnostic APFT test tomorrow morning. I will take it and I will pass it and I will take and pass the record APFT test when we take it at the end of the course.”⁹⁴

She did both.

Professionally, Vowell recalls the explosion of sex offense cases that she attributed to police agencies, prosecutors, and courts evolving sensitivity to the idea that “he said/she said” assaults could be actual rapes, informed by the fact that the standard for constructive force was changing inside the military.⁹⁵ And there were of course other cases, as well:

We also had a lot of larceny-type offenses [including] a big mess hall skimming off the meat and selling it on the local economy. We had a dentist who was sexually molesting his patients. Ted Dixon unsuccessfully prosecuted him. He

went judge-alone and it was the fraternity of old colonels, I think [the dentist and the judge were both colonels]. . . there was some room for doubt, but it was not a very plausible story. “Well, I had my hand in his pants because I couldn’t get a pulse. He seemed to pass out and I was going for the femoral artery.” That was the story—I didn’t believe it, but the judge did.⁹⁶

Notably, she remembers her first military judge rather poorly as an officer “who had been passed over several times to colonel and every time he blamed the government more and more. He was bitter.”⁹⁷ The experience of trying cases before him convinced Vowell that she never wanted to be a military judge.⁹⁸ This view later changed with his successor, Colonel Gale Garner, a former Chief Trial Judge for the Army who was in his terminal assignment at Fort Bliss prior to retirement and who Vowell remembers as professional, polite, predictable, evenhanded, and knowledgeable.⁹⁹ He revived her faith in the judiciary. Several judge advocates who worked for her were similarly inspired by Garner and later joined Vowell on the trial judiciary, including Colonel Ted Dixon and Colonel James Pohl (who adjudicated the highly publicized case of *US v. Brigadier General Jeffrey Sinclair*).¹⁰⁰

Vowell remembers her time at Fort Bliss as a dynamic period in military justice practice following the adoption of the 1984 *Manual for Courts-Martial (MCM)* and its associated changes to the practice of military justice, including the evolving criminal defense bar—the Trial Defense Service (TDS) which was still in its early years of development.¹⁰¹ Previously, local SJAs supervised and assigned both prosecutors and criminal defense attorneys, leading to issues of perceptions of fairness. She reflects that,

Before TDS was created, I didn’t think that there was a problem [with the quality of judge advocates for the defense], but there could certainly be a perception problem. I did see that there was reluctance on the part of some SJA’s to let good officers go [to the defense bar].¹⁰²

⁹⁶ *Id.* at 97.

⁹⁷ *Id.* at 98.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.* at 98–99. *United States v. Sinclair*, Army No. 20140211 (Headquarters, Fort Bragg, Gen. Court-Martial Order No. 16 (22 September 2014)).

¹⁰¹ The 1984 version of the *Manual for Courts-Martial (MCM)* replaced and substantially changed the *Manual for Courts-Martial, United States* (1969). The 1969 *Manual* superseded the *Manual for Courts-Martial, United States* (1951). For history of the *Manual*, see *MANUAL FOR COURTS-MARTIAL*, UNITED STATES, A21-1 to A21-3 (2012).

¹⁰² Oral History, *supra* note 1, at 101.

⁹² *Id.* at 87. Vowell notes that she acquitted two of them.

⁹³ *Id.* at 88.

⁹⁴ *Id.* at 89.

⁹⁵ *Id.* at 96–97.

Her assignments at Fort Bliss, nearly all of them supervisory in nature, were a rewarding transition from the MP Corps to the practice of military law, particularly justice. It prepared her professionally, and helped her establish the confidence she needed as she headed into the Judge Advocate officer graduate course, a master's program, and what turned out to be what she would describe as the "second toughest year of her life."¹⁰³

The Judge Advocate Graduate Course, Government Appellate Division, and Senior Defense Counsel for Germany, 1985–1990

The final year of her assignment at Fort Bliss was spent as a single mother, while her husband was in Boston working on an Army-sponsored master's in business administration degree. She looked forward to being in Virginia, closer for them and for the benefit of their two young children.¹⁰⁴ It was not to be. Vowell recalls that about two weeks after she arrived at the graduate course her husband told her their marriage was over, remarking, "We have nothing in common besides ten years and two kids. I want a divorce."¹⁰⁵

She was devastated.¹⁰⁶

Through this difficult time, she also recalls the support she received from her classmates and faculty, particularly her advisor, Major Tom Romig, who in later years became The Judge Advocate General of the Army.¹⁰⁷ "He and his wife Pam were just incredibly supportive of me."¹⁰⁸ The academic work at the graduate course afforded Vowell the chance to "compartmentalize" her personal life and focus some attention on her long held interest in criminal law, among other things.

Her demonstrated interest in the military justice system found expression in her choice of scholarly work, where she wrote and later published a paper detailing the origins and development of military sentencing, *To Determine an Appropriate Sentence: Sentencing in the Military Justice System*, in which she considered and critiqued the history of various sentencing philosophies (e.g., retributivist, utilitarian, and the four criteria of deterrence, incapacitation, rehabilitation, and denunciation).¹⁰⁹ In writing the article, Vowell hoped to show how, "if you understand where

something came from, you can then, therefore, more effectively argue it. It allowed me to go back to the beginning of the military court—the Civil War courts-martial, look at the World War I courts-martial, and look at sentencing and how we evolved the sentencing hearing we [now] have."¹¹⁰ Her detailed analysis of the historical evolution of sentencing practice in the military has been widely cited, and it reveals the serious consideration by which Vowell, and other judges, attempt to achieve a sense of balance in the military's adversarial method of sentencing. Vowell notes,

how is it going to feel when you have this young sergeant standing in front of you with some combat ribbons on his chest and you're about to sentence him to jail for 20 or more years. How are you going to do that? How are you going to feel when you do that? If you tell me it's not going to be hard then you need to find a new line of work. We [judges] tend to be like doctors, somewhat detached from the people we operate on. You have to think as a judge that you are not just operating on some faceless individual draped and prepped, but that you are dealing with, real human beings with real problems and needs. And how can our sentencing system better serve the needs of the military?¹¹¹

The paper and her academic performance at the school drew notice by the leadership, as—unavoidably—did her gender. The personnel assignments office for the JAG Corps approached her to remain on the faculty at the school by emphasizing the need for a female instructor.¹¹² She found the rationale unpersuasive and lobbied hard for an assignment within the realm of military justice but that would allow her to reconstitute her personal life following the divorce and to care for her two very young children.¹¹³

To accommodate, in 1986 the assignment office settled on a follow-on tour at the Government Appellate Division (GAD), U.S. Army Legal Services Agency, outside of Washington, D.C. It was a chance to do criminal law work without the time commitment required for litigation or working with commanders.¹¹⁴ She was only there a (uncharacteristically short) year when she married a fellow judge advocate, who needed a developmental assignment in labor law. To keep the couple together, they were assigned

¹⁰³ *Id.* at 110.

¹⁰⁴ *Id.* at 110–11.

¹⁰⁵ *Id.* at 111.

¹⁰⁶ *Id.*

¹⁰⁷ Major General Thomas A. Romig, U.S. Army (1972–2005), The 36th Judge Advocate General of the Army, 2001–2005.

¹⁰⁸ Oral History, *supra* note 1, at 111.

¹⁰⁹ Captain Denise K. Vowell, *To Determine an Appropriate Sentence: Sentencing in the Military Justice System*, 114 MIL. L. REV. 87, 99 (1986). 99.

¹¹⁰ Oral History, *supra* note 1, at 112–13.

¹¹¹ *Id.* at 114.

¹¹² *Id.* She remembers the dialogue with the Personnel, Plans, and Training Office, "it was, we need a woman on the faculty, we want you to stay. Not, 'Denise, you're a great instructor, you've got a lot of background . . . So part of it was how it was pitched to me.'" *Id.*

¹¹³ *Id.* at 116.

¹¹⁴ *Id.*

to the U.S. Army Europe in 1987 where he served as a labor counselor and Vowell was a senior defense counsel.¹¹⁵

The transition from prosecution to the defense was almost seamless, and she immediately invested her considerable energies into training and supervising young counsel while trying cases all over Europe. For three years, she fondly remembers “trying cases in Italy and Belgium and Holland, and had clients from colonels to privates.” She specifically remembers four murder cases, and defending a doctor whom she thought must have wanted to be caught because she “knew privates who could smuggle dope better than he could.”¹¹⁶ Another case involved “a special weapons unit in the Netherlands where a third of the Soldiers were busted for heroin; a third of [them]. I mean they used to joke about smoking opium down range sitting with the special weapons.”¹¹⁷

One memorable story from this period was a bet that Vowell made with then Major John Altenburg, who later became the Deputy Judge Advocate General of the Army.¹¹⁸ In an earlier assignment as a prosecuting trial counsel, Altenburg had successfully tried a Soldier by the name of Milton Hargrove for murder. The basic facts alleged that Hargrove, whose armor unit was returning from gunnery, loaded a round in the turret of a parked tank while the tube was in travel lock, and fired it at the tank immediately behind him, killing two Soldiers and seriously injuring two others. It was known as the “tank killer” case.¹¹⁹

A core element of the government’s case was that Hargrove was sane at the time of the crime, in contravention to the testimony from seven psychiatrists who either said that he was not or were unsure. Altenburg prevailed for the prosecution by using a series of lay witnesses to demonstrate Hargrove’s sanity. The appellate courts validated the sanity issue but an instructional error was realized in which the trial judge had incorrectly inserted an “if” into the element—the “act if known to the accused” rather than “act known to the accused.”¹²⁰ While at GAD, Vowell argued for the government that Hargrove’s actual knowledge was not an issue.¹²¹

Years later, while serving as a Senior Defense Counsel, Vowell bet Altenburg, then the Assistant Executive Officer for the Office of The Judge Advocate General, U.S. Army Europe and Seventh Army, Germany, that if the Court of Military Appeals was persuaded by her appellate argument

in the Hargrove case, Altenburg would redirect an incoming judge advocate to her office to assist with a growing case load. If she lost, then she would quietly go without the additional help until the end of her tour.¹²² Shortly thereafter the court ruled 2 to 1 in the government’s favor; she won the bet. Accordingly, Altenburg later redirected a young first lieutenant to her office who had won the trial advocacy award during the Judge Advocate Officers Basic Course.

The officer was Charles Pede,¹²³ who currently serves in the rank of brigadier general as the Chief Judge for the Army Court of Criminal Appeals and Commander, U.S. Army Legal Services Agency. Together, with others, they successfully defended a series of memorable cases throughout Europe, including a complex premeditated murder case involving spousal abuse and blood splatter evidence.¹²⁴ From that experience and so many others, Vowell recalls fondly the camaraderie of working as part of a litigation defense team and making a difference in the lives of young Soldiers accused of criminal misconduct. “And you could watch young judge advocates go from never having set foot in a courtroom before to soloing . . . You get such a kick out of seeing what people can do.”¹²⁵

Plans Officer for the Office of The Judge Advocate General, Chief of Torts Branch for Army Litigation Division, and Circuit Judge and Chief Circuit Judge, Army Trial Judiciary, 1990–1996

In 1990, Vowell returned from her tour in Germany to an assignment as a plans officer in the Pentagon, working in the Office of The Judge Advocate General. “Not fun years,” as she remembers, “but I learned a lot about how the Army operates.”¹²⁶ In 1992, she was among the very few judge advocates in recent history to be promoted to lieutenant colonel ahead of her peers (below the zone of consideration), and was one of only two women within the cohort promoted that year.¹²⁷ From there, she moved to her dream job as the Chief of Torts Branch at the Litigation Division for the U.S. Army Legal Services Agency, located in Arlington, Virginia.

I was getting to work with great litigators, U.S. Attorney’s offices all over the country [and the Department of Justice’s main office]. Worked with some really difficult issues involving AIDS litigation

¹¹⁵ *Id.* at 117.

¹¹⁶ *Id.* at 118.

¹¹⁷ *Id.* at 77.

¹¹⁸ Major General John D. Altenburg, U.S. Army (1973–2002), Deputy Judge Advocate General (then known as The Assistant Judge Advocate General) (1998–2002).

¹¹⁹ Oral History, *supra* note 1, at 119–20.

¹²⁰ *Id.* at 120.

¹²¹ *Id.* at 121.

¹²² *Id.*

¹²³ Brigadier General Charles N. Pede, U.S. Army (1984–present), Commander, U.S. Army Legal Services Agency/Chief Judge, U.S. Army Court of Criminal Appeals.

¹²⁴ Oral History, *supra* note 1, at 122–25.

¹²⁵ *Id.* at 126.

¹²⁶ *Id.* at 127.

¹²⁷ JUDGE ADVOCATE PUB. 1-1, JAGC PERSONNEL AND ACTIVITY DIRECTORY (1992–1993) (Office of The Judge Advocate Gen., Dep’t of the Army (on file with author)).

and the Army's blood banking program, a medical experimentation case that was just appalling, and just the usual: everything from bubbas with a six-pack and a HUMVEE on a National Guard weekend who plowed through a stop sign and killed or maimed somebody.¹²⁸

After two years of highly productive and enjoyable litigation work, Vowell was faced yet again with the difficult choice between her personal and professional ambitions. In 1994, her final year at Litigation Division, she had impressed Major General Michael Nardotti,¹²⁹ who at the time was the Assistant Judge Advocate General for Civil Law and Litigation. General Nardotti queried Vowell about her interest in becoming the SJA for the 1st Cavalry Division, Fort Hood, a position he himself once held.¹³⁰

It was another dream job for Vowell. But then her personal life came to the fore; her husband was retiring from the Army and did not want to return to Texas, and the marriage was in trouble. She reflects,

So I was faced with a real choice. I had two children who are 10 and 12. My step-kids were pretty much grown and out of the house at that point. But they were going to go with me, wherever I went, *but could I be both an effective mom and an effective staff judge advocate without support at home? I mean, I'd been a single parent before. I knew how hard it was. And I knew how hard being a division SJA would be.*¹³¹

As an alternative, Colonel Ferdinand Clervi, suggested she consider becoming a trial judge. She resisted at first, questioning whether she had the temperament.¹³² Then, perhaps by design, Brigadier General Thomas Cuthbert,¹³³ the Commander at the U.S. Army Legal Services Agency, took Vowell to lunch one day and made the same pitch - "I want you to be a trial judge. We haven't had a woman on the bench for 14 or 16 years."¹³⁴ She remembers the conversation and her thoughts at the time.

The last female trial judge had been a woman named Nan Hunter, during the

Vietnam era. There hadn't been any women who'd had the developmental assignments to be [judges] and there weren't very many women field grade officers. He said, "I'm going to make you an offer you cannot refuse. If you will go on the trial bench, I will guarantee that you will be assigned here, the First Judicial Circuit (Washington, DC)." So sometimes you are faced with impossible choices, so you make the best one. And I made the one that was best for my kids and me, and I ultimately think probably the best for the Army, and took the job and fell in love with it, didn't think I would.¹³⁵

Joining the Army judiciary was the move that would later help define her career and contribution to Army jurisprudence, and she embraced it. She had tried cases and served at the government appellate division, and so had seen and studied the mistakes of others. She was self-aware of the "role shift" she had to make from those earlier experiences, "that just because you would do it one way does not mean that they're doing it wrong."¹³⁶ Indeed, Vowell found that self-awareness itself is an invaluable tool and characteristic for the young (and perhaps not so young) jurist.

You have to know yourself. [For example] I know that I sometimes have a short flash-to-bang. And so when I was going into a case that I knew was going to be contentious [or had] people that I thought were going to get under my skin, I would prepare six sticky notes—yellow sticky paper that said, "be mellow, mellow yellow." And I would put them up on the inside of the lip of the bench and every time anybody did something that ticked me off, I would grab one of those pieces of paper and I would tear it up and throw it into the trash can that was under the bench. And when I finished the sixth one, I would announce we needed to take a recess. And I would go back into chambers and prepare six more.¹³⁷

While the art of judging was all new to Vowell, she was confident that the Army and her life experiences had afforded her the developmental experiences required for the job. Among the techniques Vowell developed and advocated then, and subsequently, were the role shift and awareness noted previously, the need for intellectual and emotional objectivity, the challenge of sentencing, the sense of the needs and concerns of panel members, and

¹²⁸ Oral History, *supra* note 1, at 128.

¹²⁹ Major General Michael J. Nardotti, Jr., U.S. Army (1969–1997), The 34th Judge Advocate General of the Army, 1993–1997. See generally Major George R. Smawley, *The Soldier-Lawyer: A Summary and Analysis of An Oral History of Major General Michael J. Nardotti, Jr., United States Army (Retired) (1967–1997)*, 168 MIL. L. REV. 1 (2001).

¹³⁰ Oral History, *supra* note 1, at 128.

¹³¹ *Id.* (emphasis added).

¹³² *Id.* at 128–29.

¹³³ Brigadier General Thomas R. Cuthbert, U.S. Army (1961–1996).

¹³⁴ Oral History, *supra* note 1, at 129.

¹³⁵ *Id.*

¹³⁶ *Id.* at 133.

¹³⁷ *Id.*

underappreciated responsibility of being in charge of a court room.¹³⁸ She also discovered the judiciary was a place well suited to introverts like herself, who are personally attuned to the independent role that military judges play within the Army community, noting that “the guys and gals who are big social animals have a much harder time adjusting to the bench. . . the ability to socialize on an installation is going to be severely curtailed.”¹³⁹

Among the things counsel would do that concerned—and angered—Vowell the most was anything approaching gamesmanship, by either party. Examples include failure to give notice of an alibi defense and then raising it in the middle of trial and failure to properly notify of rape shield evidence, and those who seemed incapable of using the MCM.¹⁴⁰ “I had no problems with people who were learning and, you know, [being] inept as they were learning.”¹⁴¹ But she had little patience for judge advocates who intentionally attempted to acquit themselves of professional standards, or omitted them by lack of effort or due diligence.

Perhaps her greatest concern and observation as a military trial judge at the turn of the decade and thereafter, was the rapidly decreasing quality and experience of criminal litigators. To Vowell and her peers on the bench, it seemed almost generational.

One of the lines from one of my military judges was, “we have the myopic leading the blind.” We have people who are chiefs of justice who have never tried a contested case. We have become so enamored of Chapter 10s [adverse administrative discharges in lieu of courts martial] and deals that we are unwilling to take and try the hard cases. . . . Nobody is entitled to a Chapter 10.¹⁴²

I was at the point of saying this is our core competency. This is our statutory mission and if we continue to present JAGs who don’t know what they are doing in front of panels, we are going to lose the respect and confidence of those officers. . . . Our military justice system was designed in the Uniform Code in the ‘50s to function with a group of people who had experience—the first brigade commander I prosecuted for at 1st Cav Division had tried over 250 cases as a line officer. We had line

officers with that level of experience who we don’t have now. The convening authorities don’t have that experience now. So you have to have people who are experienced in the military justice system who can convey that to them. It’s a very different kind of Army.¹⁴³

A particular observation Vowell had concerned the military’s approach to the prosecution of sexual assault within its ranks. In her experience the Army had no greater problem with this particular crime than a similarly situated college town, attributing much of the problem to youth and alcohol/drugs. Citing the impact they had, she recalls that courts-martial generally decline during deployments, and that “if you take booze and their families away from American Soldiers it’s amazing how well behaved they are.”¹⁴⁴ The other problem was self-inflicted: a poorly drafted punitive article in UCMJ Article 120 [Rape and sexual assault generally], which Vowell describes as “a thought experiment that got in the hands of people in Congress that shouldn’t have had it [the problems were not communicated] before it suddenly became law...and was unconstitutional.”¹⁴⁵

Staff Judge Advocate, 1st Infantry Division, Germany and Bosnia, 1996–1997

In 1996, after two successful years on the trial bench, the JAG Corps leadership again approached Vowell about returning to the operational Army as a staff judge advocate. This time it was MG Kenneth Gray, then the Deputy Judge Advocate General,¹⁴⁶ who inquired whether she had any interest in serving as an SJA for one of the Army’s few Infantry divisions.¹⁴⁷ She said yes, and recalls the timing was now right.

My kids are now 12 and 14; it’s a little easier in many respects—you can leave a 14 year old and a 12 year-old home alone to make dinner and trust that they won’t kill each other or barbeque the dog; a 10 year old and 12 year old not so much.¹⁴⁸

¹⁴³ Oral History, *supra* note 1, at 142–143.

¹⁴⁴ *Id.* at 144.

¹⁴⁵ *Id.* For an instructive history of the development of UCMJ Article 120 and associated sex crimes, including the discussion between the definitions of force and consent, see SEX CRIMES AND THE UCMJ: A REPORT FOR THE JOINT SERVICE COMMITTEE ON MILITARY JUSTICE (Jan. 13, 2005), available at www.dod.mil/dodgc/php/.../subcommittee_reportmarkharvey1-13-05.doc (last visited Oct. 3, 2014).

¹⁴⁶ Major General Kenneth D. Gray (U.S. Army 1966–1997, Deputy Judge Advocate General (1993–1997)). See generally Lieutenant Colonel George R. Smawley, *By the Content of Character: The Life and Leadership of Major General Kenneth D. Gray (Ret.) (1966–1997), The First African-American Judge Advocate General Officer*, 195 MIL. L. REV. 128 (2008).

¹⁴⁷ Oral History, *supra* note 1, at 129–30.

¹⁴⁸ *Id.* at 130.

¹³⁸ *Id.* at 131–34.

¹³⁹ *Id.* at 135–36.

¹⁴⁰ *Id.* at 140.

¹⁴¹ *Id.* at 141.

¹⁴² See U.S. DEP’T OF ARMY, REG. 635-200, ACTIVE DUTY ENLISTED ADMINISTRATIVE SEPARATIONS ch. 10, at 81 (6 June 2005) (RAR 6 Sept. 2011) (Discharge in Lieu of Trial by Court-Martial).

So in July 1996, she replaced Scott Black, with whom she had served at Fort Bliss, as the 1st Infantry Division SJA, headquartered in Würzburg, Germany. She recalls fondly the tremendous support she received from the Black family in making the transition to Germany, and the excitement at the prospect of an operational deployment to Bosnia.¹⁴⁹ LTG Black told her she would not deploy, “we’re going to go down and be the covering force to get 1st Armored out of Bosnia, but we’re not staying—you won’t deploy, it’s just going to be a brigade covering force operation.”¹⁵⁰

But he was wrong, as often happens in military planning. A couple weeks later in mid-July the commanding general, Major General Monty Meigs, told Vowell to start packing, and by September they were gone.¹⁵¹ And with that Vowell, just weeks into her first tour as a staff judge advocate, became the first woman to lead an Infantry division legal office during a deployed contingency operation.¹⁵² In a broader context, it is also worth noting that Colonel Kathryn Stone, U.S. Army (Retired), became the first female Army staff judge advocate to enter into a declared combat operation when she deployed with the 10th Mountain Division (Light Infantry) into Uzbekistan and Bagram, Afghanistan, in support of *Operation Enduring Freedom* in 2001–2002. They followed women like Major Ann Wansley, the first female Army Judge Advocate to serve in Vietnam in 1966–67, and Major Nancy A. Hunter, who was the second (1970).¹⁵³

Operationally, an element of the 1st Infantry Division headquarters had been added to command the Multinational Division-North sector of the NATO area of responsibility. They fell under the commanding general for U.S. Army Europe (USAREUR), who was selected to command the NATO mission from Sarajevo. The SJA for USAREUR was Colonel Malcolm H. “Mac” Squires (since retired), who currently serves as the civilian Clerk of Court for the Army Court of Criminal Appeals.¹⁵⁴ The principal tactical element was the Second “Dagger” Brigade, 1st Infantry Division based in Schweinfurt, whose judge advocate was Major Sharon E. Riley.¹⁵⁵ Vowell was in Würzburg, an hour so a way, and she and Major Riley planned much of the legal support to deploying forces in the evening over dinner at Vowell’s home. She remembers,

We’d go to my quarters. I’d cook dinner for my kids. We’d eat dinner. Sharon would eat dinner with us and then she and I would work on the deployment after dinner or I’d put her to work chopping vegetables—Sharon never ate enough vegetables. . . . So we joked that we planned the deployment over my dining room table or my kitchen counter.¹⁵⁶

Among the challenges Vowell recalls was the general lack of context and experience for planning the kind of peace-enforcement mission that the Bosnia mission required. It was rather new to the leaders in Europe who had for decades prepared and trained for a very different sort of conflict.

I grew up in the Army in the Cold War. We were always fighting the Fulda Gap problem. The Russian hordes were going to pour through the Fulda Gap. They were going to push to Frankfurt. We were going to nuke them until they glowed, declare victory and everybody was going to go home. Yeah, right.¹⁵⁷

What she and her commander found instead was a large multinational, multi-component force based at Tuzla, with subordinate brigade and battalion-size units from the United States, Russia, Norway, Poland, Turkey and Denmark. All but the Turks brought lawyers, and Vowell was the technical supervisor for all of them.¹⁵⁸ Moreover, Major General Meigs retained his flag during the year-long deployment, and so remained the commanding general and general courts-martial convening authority for Würzburg-based units some 695 miles away, making it among the largest JAG offices in the Army at the time.¹⁵⁹

The legal challenges she and her team faced would be familiar to those who served in post-9/11 conflicts in Iraq and Afghanistan. A majority of her time was spent on fiscal law issues, including humanitarian and civic relief missions without the benefit of humanitarian or civic relief funding. She recalls one instance, where,

The division surgeon came and said, “Denise, I’ve got about 800 units of flu vaccine left over. I want to give it to the Russians.” [He] used two words that should never appear in the same sentence together. . . . Russians and give, because we had no acquisition and cross servicing agreement. So I said, “Doc, explain to me how it is medically necessary for the

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ General Montgomery C. Meigs, U.S. Army (1967–2003).

¹⁵² Oral History, *supra* note 1, at 130–31.

¹⁵³ FREDERIC L. BORCH, III, JUDGE ADVOCATES IN COMBAT: ARMY LAWYERS IN MILITARY OPERATIONS FROM VIETNAM TO HAITI 56 n.75 (2001).

¹⁵⁴ Oral History, *supra* note 1, at 152.

¹⁵⁵ Colonel Riley currently serves as the Staff Judge Advocate for the U.S. Army Training and Doctrine Command, and was formerly the Acting Commander, The U.S. Army Judge Advocate General’s Legal Center and School (2013–2014).

¹⁵⁶ Oral History, *supra* note 1, at 152.

¹⁵⁷ *Id.* at 154.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

safety of American Soldiers for the Russians to be vaccinated against the flu.” It’s the first time I’d ever heard the term herd immunity. I hear it a lot now. . . . So I write up a legal opinion that says it is for force protection and medical necessity that the Russians be vaccinated. I didn’t use the word . . . give.¹⁶⁰

Another situation involved a well-intentioned initiative by a young JAG captain, who was fluent in Russian and had previously worked in Yugoslavia, to have Russian soldiers jump out of American helicopters under the guise of “interoperability training.”¹⁶¹ Problem was that the young captain had raised the idea directly with an American general officer, who ran it directly to NATO headquarters in SHAPE, Belgium. And it was approved. Colonel Pat Finnegan, the Army legal advisor to SHAPE, called Vowell to question the whole idea and how it happened and what to do, agreeing between them that the idea was bad law and poor policy. But there was nothing either of them could do.

Finally, although she regretted not interacting more with the local population due to security concerns, there was at least one memorable instance where she attended a conference of Bosnian judges in Tuzla. There, she encountered a Sarajevo judge who asked her and those assembled, as a former judge, “what does an honorable judge do when faced with an unjust law?”¹⁶²

His dilemma was this. . . based on the right of return, he had a situation where there was a widow from Srebrenica and her four surviving children living in an apartment that was formerly occupied by a Bosnian Serb, who wanted to return home. [The judge related] “I am supposed to evict based on the right of return . . . but she can’t go back to Srebrenica and live. And you are sending her back to where her husband and two older sons were gunned down and buried in a mass grave.” So, an ethical dilemma.¹⁶³

No doubt judge advocates who worked similar issues in Iraq, dealing with Kurds, Shia, and Sunni judges, have similar stories. In the end, Vowell and her team helped write the lessons learned that would inform judge advocates years later in how to plan and conduct legal operations in combat; whether working fiscal law challenges, balancing military justice requirements locally or over hundreds of miles, targeting and rules of engagement issues, and the creative lawyering required for an immature theater with volatile security and force protection concerns. She was particularly

proud of the success 1st Infantry Division had in integrating active army and reserve component personnel, something she would later seek to replicate as the Army’s Chief Trial Judge.¹⁶⁴

Senior Service College and Chief, Tort Claims Division, U.S. Army Claims Service, 1997–1999

In 1997, having recently been promoted to colonel, Vowell entered the Industrial College of the Armed Forces (ICAF) following her ten month deployment in Bosnia.¹⁶⁵ She used the experience of the year in Tuzla as a basis of her study, asking—“How do you stop something like that from happening? How do we make better choices? It’s a great lesson in why you never want to wear a blue beret.”¹⁶⁶

During her year at ICAF, based at Fort McNair in Washington, DC, Vowell fulfilled a promise she made to Major General Meigs to capture and summarize their experience and the fiscal law challenges they faced and overcame in Bosnia.¹⁶⁷ It was something new at the time, in a legal discipline still considered nuanced and the portfolio of specialists, mostly contract attorneys of which there were too few. The original draft of the paper, used to satisfy her academic requirements, was deemed too long by publishers. But a friend and fellow judge advocate, Colonel Steve Castlen, thought the paper was timely and important, and personally championed it with the editor of the *Military Review*, who published it in 2000—*Using Operations and Maintenance Funds in Contingency Operations*.¹⁶⁸ Two years later and thereafter, as U.S. forces prepared for operations in Iraq and Afghanistan, Vowell’s paper served as a must-read for judge advocates planning and serving in contingency operations, particularly regarding the fiscal challenges.

Following the year at ICAF, Vowell sought to become the Chief of the Army’s Litigation Division, based at the time in Ballston, Virginia. But the position was encumbered by then Colonel David Carey, who was later promoted to general officer,¹⁶⁹ and so she agreed instead to take the position as the Chief of the Torts Branch at the nearby U.S. Army Claims Service based at Fort Meade, Maryland.¹⁷⁰ It

¹⁶⁴ *Id.* at 168.

¹⁶⁵ The 2006–2007 Bosnia experience was an important year for her personally and professionally, despite the hardship on her family; she would not have traded it for anything. Vowell gives much credit to the gifted staff who made the deployment a success, including judge advocates Sharon Riley, Paul Turney, Eric Krauss, Chief Warrant Officer Three Octavia Saine, and Chief Legal Noncommissioned Officer Master Sergeant Angela Thomas. *Id.* at 163–67.

¹⁶⁶ *Id.* at 159.

¹⁶⁷ *Id.* at 158.

¹⁶⁸ Denise Vowell, *Using Operations and Maintenance Funds in Contingency Operations*, MIL. REV., vol. LXXX, Mar.–Apr. 2000, at 38; Oral History, *supra* note 1, at 159.

¹⁶⁹ Brigadier General David P. Carey, U.S. Army (1977–2005).

¹⁷⁰ Oral History, *supra* note 1, at 170–71.

¹⁶⁰ *Id.* at 156–57.

¹⁶¹ *Id.* at 157.

¹⁶² *Id.* at 160.

¹⁶³ *Id.* at 160–61.

was an important and interesting job involving management and supervision of nearly a dozen attorneys who, on behalf of the Army, conducted pre-litigation claims investigations and settled those they could.¹⁷¹ Her year at Fort Meade was characterized by resolving a back-log of long standing cases, working on internal systems for the management of cases, and bringing her sense of leadership and practical approach to problem solving to Army claims.¹⁷²

Associate Judge, U.S. Army Court of Criminal Appeals, Chief Trial Judge, U.S. Army, 1999–2006

Her follow-on assignment after the year at Fort Meade came about as the result of an argument between Vowell and Major General Walter Huffman, the serving TJAG at the time,¹⁷³ regarding what she had been promised and what was now possible. Huffman had previously and informally told her she was in line for the Litigation Division position but reversed course when he decided to leave Colonel Carey in place for an additional year. She remembers,

So that is when the TJAG and I yelled at each other; probably not the wisest career move. So I was told then I could go to [the OTJAG office of] professional responsibility. I said investigating my friends and neighbors is not where it's at for me. I could go to the Office of Congressional Legislative Liaison; yes, put an introvert in that job. I don't think so. Or I could go to the court . . .¹⁷⁴

It was a relatively easy decision. Strange as it may seem, both personally and professionally, Vowell was attuned to the idea of a quiet and reflective work experience. Her second marriage had recently ended, and as a newly single mother, the relatively staid and predictable battle rhythm of Army Court of Criminal Appeals combined with her love of military justice made the move an obvious one under the circumstances.¹⁷⁵ While she missed working in an environment with young captains and felt there weren't enough oral arguments,¹⁷⁶ Vowell found the process of judicial review and the camaraderie of the court both welcoming and rewarding. In particular, she enjoyed having peers for the first time since she was a captain, people she could talk to as equals both in rank and professional

experience.¹⁷⁷ “That was the joy of ACCA,” she remembers fondly, “you had colleagues.”¹⁷⁸

But as in all things there were exceptions. Vowell remembers rather vividly an exchange she had with the Clerk of Court regarding substitute panel members, added to the standing three member panels when there were conflict cases, where her long standing commitment to social justice and legal professionalism led to occasional friction.

I told the Clerk if he ever gave me another rape case involving two particular judges he was a dead man. One of them didn't think rape existed unless somebody was hit on the head and dragged out into the woods. The other was just lazy. So then I ended up being the referee between the two because one is arguing the ideological position and the other is just arguing for the sake of it because he hadn't read the freakin' record. That and you're going to need to bring some towels in to mop the blood off the floor of the deliberation room.¹⁷⁹

She used her two years at the appellate court to apply the lessons and perspective she had forged over the previous years of leadership and law, even in the small things. For example, drawing from her time as a government appellate attorney, where she felt the efforts of appellate counsel were inadequately reflected in the opinions of the court, Vowell used her position to prod the judges to set out the facts of the case for the record in greater detail even if it meant making decisions longer—and not to ignore elements of a case simply because they did not support a particular opinion.¹⁸⁰ It was about drafting the best possible opinions, not only legally but also fairly and in a balanced way that served both parties, practitioners, and the broader audience for judicial achievement.

While she could have remained and flourished on the appellate court a total of five years, until her mandatory retirement, Vowell felt that after all she had seen and done that she had something important to offer the trial judiciary, and the Army leadership who oversaw it. So when the Chief Trial Judge position came open in the summer of 2001, she reached back to Major General Romig and asked if she could have the job, and he agreed.¹⁸¹

After twenty-seven years in the Army, having served among its very few female Infantry division staff judge advocates at the time and perhaps only its second female

¹⁷¹ Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 1291, 1402, 2401–2402, 2411–2412, and 2671–2680 (2006), as currently implemented by U.S. DEP'T OF ARMY, REG. 27-20, CLAIMS ch. 4 (8 Feb. 2008). The U.S. Army Claims Service settlement cap at the time was \$100,000, with higher amounts requiring approval by the Secretary of the Army.

¹⁷² Oral History, *supra* note 1, at 170–71.

¹⁷³ Major General Walter B. Huffman, U.S. Army (1965–2001), The 35th Judge Advocate General of the Army (1997–2001).

¹⁷⁴ Oral History, *supra* note 1, at 172.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.* at 181.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.* at 179–80.

¹⁸⁰ *Id.* at 180.

¹⁸¹ *Id.* at 173.

trial judge, Vowell assumed leadership of Army's Trial Judiciary where she would influence the administration, assignment, selection, and education of military trial judges. The timing of her assignment, on the eve of 9/11 and all that would follow, also required her to work with the JAG Corps leadership on reserve force structure as it related to the judiciary, where she "saw great opportunities for integrating reserve judges into operations much more effectively."¹⁸²

One of the underappreciated aspects of the Chief Judge's role is the close nexus they can have with their peers from the other Services. Vowell notes,

When I became the Chief Trial Judge, the Chief Trial Judge of the Navy-Marine Court was a woman. The Chief Trial Judge of the Coast Guard was a woman, and we promised the Air Force counterpart that we wouldn't sexually harass him. We talked a lot. We worked together a lot.¹⁸³

They collaborated in cross-service details of trial judges, various educational programs and courses, and worked across Service cultures and distinctions in things like sentencing scenarios and rules of court.¹⁸⁴ "We did everything we could to help people understand how their personal predilections might have impacted their decisions."¹⁸⁵

This applied as well to the growing number of Reserve Component judges, who were required as the conflicts in Iraq and Afghanistan increased the demand and opportunities for their mobilization and service. Vowell was highly attentive to the orientation and acculturation of reserve officers with very different civilian professional experiences now working as Army trial judges at home and abroad.¹⁸⁶ For example, in 2003 she mobilized an officer who in his civilian life was a District Court Judge in Fairfax County, Virginia. He was assigned a drug case at a local installation in which he approached the sentence the same way he would a first time offender in district court, which was far lighter than that of his active component peers. Vowell reached out to him, and offered not criticism but perspective. She mentored, "you are sentencing in a different culture. Let's talk about the philosophies and military sentencing. If that's your sentence, that's your sentence; nobody is going to change that, but you ought to think about [the nuances of military culture vice civilian culture]."¹⁸⁷

This approach to the Reserve Component judges was important since their service in the coming decade of conflict would become an essential combat multiplier. The Army has historically brought its military justice system forward during contingency and combat operations,¹⁸⁸ and the challenges faced by Vowell and the Army trial judiciary in the years immediately following 9/11 and ensuing *Operations Iraqi Freedom* and *Enduring Freedom* should not be underestimated. From 2003 to 2005, the number of courts-martial tried in the combat theater of operations increased from 37 to 144, a more than three-fold increase in just 36 months.¹⁸⁹ Cases were tried in a host of facilities in Iraq and Afghanistan under some of the most austere conditions since the American experience in Vietnam. They were supervised by military judges sourced from across Europe and the continental United States, including Vowell herself, who personally tried felony-level cases in Kandahar, Afghanistan, and Kuwait.¹⁹⁰

At this time the Army trial judiciary reported trying roughly 1,400 cases annually from 2003–2005, divided among 17-22 individual judges in any given year.¹⁹¹ The Reserve Component and its 18 or so military judges (at the time) played an important role in the success of the judiciary's support of military justice for the hundreds of cases tried in the deployed environment. Over time, Vowell worked to strengthen the cohort of reserve judges by making it smaller and increasing the deployment, mobilization, and education opportunities to increase their qualified contingent capability.¹⁹² The goal of the restructuring was to make them more plug-and-play with the active Army, which was widely considered a success.

Thoughts on the Army Judiciary and the selection process for Military Judges—Experience, Temperament, and Common Sense

So one day you're a lawyer and the next day you are a judge and its natural to think that not much has changed - you were a player, now you're a referee, but it's the same game. Not quite. A good judge is impartial, of course, but he's a product manager rather than just a referee, trying to

¹⁸² *Id.*

¹⁸³ *Id.* at 182.

¹⁸⁴ *Id.* at 182–83.

¹⁸⁵ *Id.* at 184.

¹⁸⁶ *Id.*

¹⁸⁷ *Id.* at 185.

¹⁸⁸ See generally BORCH, *supra* note 152; DEFENSE LEGAL POLICY BOARD, REPORT OF THE SUBCOMMITTEE ON MILITARY JUSTICE IN COMBAT ZONES, FINAL REPORT (May 30, 2013) [hereinafter FINAL REPORT], available at <http://www.caaflog.com/wp-content/uploads/20130531-Subcommittee-Report-REPORT-OF-THE-SUBCOMMITTEE-ON-MILITARY-JUSTICE-IN-COMBAT-ZONES-31-May-13-2.pdf> (last visited Sept. 12, 2014) (The DLPB is a Federal Advisory Committee established to provide independent advice to the Secretary of Defense).

¹⁸⁹ Colonel Mike Hargis, U.S. Army Trial Judiciary, Today's Military Justice Environment (20 June 2014) [hereinafter Trial Judiciary Briefing] (on file with the author).

¹⁹⁰ Vowell Interview, *supra* note 10.

¹⁹¹ Trial Judiciary Briefing, *supra* note 187.

¹⁹² Vowell Interview, *supra* note 10.

*produce a good product (good decisions) with inputs from lawyers and staff.*¹⁹³

During one encounter at an event sponsored by the National Association of Women Judges, Vowell, sitting as a panel member with former Supreme Court Justice Sandra Day O'Connor in the audience, remembers discussing the role of both actual and perceived judicial independence and its implications. When asked about it in the military context, she responded, "President Bush said to a reporter at The Washington Post that Abu Ghraib should be closed and torn down. The next week [Army] Judge Jim Pohl ordered it preserved as a crime scene. Now, that's the independence of the military judiciary. Justice O'Connor smiled and nodded at the point."¹⁹⁴

The relative independence of the Army judiciary, and the important role trial judges play in the credibility and function of the military justice system, was forever on Vowell's mind. The reputation of the military judiciary, in particular, was never lost on her. Since developments like the creation of a trial judiciary in 1968,¹⁹⁵ and adoption of the federal rules of evidence and modernization of the rules for courts-martial in 1984, the challenge had been to bring military judges into the system in a constructive way that did not destroy the balance between commanders and the 4th Amendment rights of Soldiers.¹⁹⁶

It was while she was sitting as a trial judge in the Army's 1st Judicial Circuit, in 1994, following the wave of reforms begun in 1968, that the U.S. Supreme Court upheld the system of non-tenured military judges against a due process challenge in *Weiss v. United States*, where the defendants challenged the structure of courts-martial based on the lack of presidential appointment and fixed terms for military judges.¹⁹⁷ Concurring in that decision, Justice Ginsburg wrote: "Today's decision upholds a system of military justice notably more sensitive to due process concerns than the one prevailing through most of our

country's history"¹⁹⁸ Thus, by the mid-90s, the military justice system and judiciary had achieved its goal of improving its legitimacy in the eyes of those observing it – gains Vowell was determined to maintain and advance.

In particular, one of her great legacies was the aggressive way she approached the selection and cultivation of highly competitive Army judge advocates to serve on its trial bench. Her approach was in keeping with the standards of the civilian federal judiciary. Almost by design, the American judiciary draws practitioners to the bench from a variety of backgrounds with wide and diverse experience in private practice, academia, and government service and life more generally. Of this, noted federal circuit judge Richard Posner, of the 7th Circuit Court of Appeals, has written:

The United States is unusual in the porousness of the membranes that separate the different branches of the legal profession. The judiciary both federal and state is a lateral-entry institution (like the military) rather than a conventional civil service; and unlike the British lateral—entry judiciary, in which the judges are drawn from a narrow, homogeneous slice of the legal profession—namely, senior barristers—American judges are drawn from all branches of the profession, including academic.¹⁹⁹

In Vowell's mind, the Army should be no different. From 2001-2003, as the Boards Officer for the Army JAG Corps personnel office, the author witnessed Vowell's active interest in the career patterns and performance evaluations of prospective trial judges, both from those who had expressed interest in the bench and those she worked to recruit. Unsatisfied by mere reputation or the analysis of personnel officers, she personally vetted the officers who would sit on the trial judiciary. She purposefully engaged assignments officers, staff judge advocates, and Judge Advocate General Officers in pursuit of the best possible judges for the Army. She had clearly observed the deference and respect Soldiers gave military judges during courts-martial, and of civilians before civilian civil and criminal courts. So, she thought,

why is it within our own Corps that we don't hold judges in that same esteem [as civilians do]? We don't see it as a career enhancing move. So when I became the chief trial judge, this was one of the things I wanted to focus on. For example, how we pick—yes, only 50% of lieutenant colonels can be promoted to colonel. And the trial judiciary maybe ought to have a share [among officers passed over for promotion], but it should not have more

¹⁹³ POSNER, *supra* note 2, at 332–33.

¹⁹⁴ Oral History, *supra* note 1, at 148.

¹⁹⁵ The Military Justice Act of 1968 created the position of the military judge to preside over courts-martial and to separate the judicial function (previously occupied by line officers) from the chain of command. It shifted the responsibility for military judges from commander to the respective Judge Advocate Generals for the various military services. See generally *United States v. Mitchell*, 37 M.J. 903 (N.M.C.M.R. 1993) (detailing the legislative history of the Military Justice Act of 1968).

¹⁹⁶ Vowell Interview, *supra* note 10.

¹⁹⁷ *Weiss v. United States*, 510 U.S. 163 (1994) (The current process for military judicial assignments satisfies the Appointments Clause prescribed by Article II, Section 2 of the Constitution.). The constitutionality of the military courts-martial was originally considered and validated by the Supreme Court in *Dynes v. Hoover*, 61 U.S. 65 (1857). For an interesting legislative history on the 1968 Military Justice Action, see *Military Justice, Joint Hearings before the Subcommittee on Constitutional Rights, Committee on the Judiciary, and Special Subcommittee of the Committee on Armed Services, United States Senate*, 89th Cong., 2d Sess. (1966), available at http://www.loc.gov/r/frd/Military_Law/pdf/MJ_hearings-1966.pdf (last visited Oct. 7, 2014).

¹⁹⁸ *Weiss*, 510 U.S. at 194 (Ginsburg, J., concurring).

¹⁹⁹ POSNER, *supra* note 2, at 337–38.

than its share. And we had far less with the people that I helped pick and encouraged TJAG to pick and recruited. So I'd like to think we turned that around.²⁰⁰

Indeed, over past decade or so the Army has dramatically improved the way it educates, selects, and develops its judges. Even in the basics of judicial training, such as the Military Judges Course, which the Army Chief Trial Judge can shape and influence, great strides were advanced under Vowell and championed by her successors. In 2014, for example, this course, which is attended by most military service trial and appellate judges, was recognized by the American Bar Association (ABA) Judicial Division National Conference of Specialized Court Judges (NCSCJ) with the ABA's Judicial Education Award in recognition of its "*successful efforts* in providing high quality judicial education and training trial and appellate judges in every branch of the United States military and Department of Homeland Security."²⁰¹

In the area of judicial assignments and talent management, for the most recent 2013–2014 assignment cycle, The Judge Advocate General assigned former (female) trial judges to serve as SJAs for two of the Army's high profile divisions—Colonel Susan Arnold to the 101st Infantry Division and Colonel Allison Martin to the 1st Cavalry Division. The former SJA for the 25th Infantry Division, Colonel Mark Bridges, was a former trial judge and returned to the trial bench in 2014. The current Chief Trial Judge for the Army, Colonel Tara Osborne, was previously the SJA for the 2d Infantry Division; her immediate predecessor, Colonel Mike Hargis, previously served as the SJA for U.S. Special Forces Command. Other trial judges with previous experience as SJAs include Colonel Chris Frederickson, Colonel Andrew Glass, and Lieutenant Colonel Steve O'Neill. The same goes for the appellate court, where the former SJA for the 82nd Airborne Division, Colonel Lorraine Campanella, currently sits on the Army Court of Criminal Appeals, and Colonel Jan Aldykiewicz, who departed ACCA in 2014, now serves as the SJA for the large and complex installation at Fort Polk, LA.²⁰²

So, help turn it around, Vowell most certainly did.

By actively encouraging greater professional diversity for the judiciary—enhancing the scope of *experience* that officers selected for the bench had and would one day take back to other senior leadership positions—she fortified both

the bench and professionalism of those who advise commanders. Colonel Campanella, whose tour as the SJA for the 82d Airborne Division included a year-long deployment to Afghanistan, observes:

My experience as former SJA caused me to often question the sensibility of an opinion. The SJA experience can bring the discussion and execution of justice back to reality. The diversity of experience and thought in each panel (former judges, former SJAs, criminal law experts) creates a kind of synergy that results in high quality well thought-out, analyzed, and instructive opinions.

Similarly, judge experience can provide greater insight to SJAs. We are all a product of our experience and exposure. Judges are uniquely positioned to thoughtfully and critically evaluate the full spectrum of the execution of military justice. This leads to a greater understanding of the rules and limits thereof facilitating SJAs to better inform the discussion with commanders. Naturally then, they make ideal legal advisors.²⁰³

What are the attributes Vowell looked for in military judges? Reduced to the basics, there were three: criminal law experience, temperament, and common sense.²⁰⁴ Vowell explains,

I really looked for people who had worked both sides of the aisle. It wasn't an absolute bar if you had only worked one, but I really went into it with a degree of skepticism. If you philosophically chose not to be in the Trial Defense Service, then you should not be on the bench. . . you ought to have both sides. . . . [As for] judicial temperament, people can have, you know, like me, a short flash to bang time, but you have to learn to compensate for it. And if you have, that's great. But if

²⁰⁰ Oral History, *supra* note 1, at 147.

²⁰¹ Letter from Hon. Karl Grube, Awards Comm. Chair, Nat'l Conference of Specialized Court Judges, to Colonel James F. Garrett, Dean, Judge Advocate Gen.'s Legal Ctr. & Sch. (May 15, 2014) (award presented August 7, 2014) (on file with author).

²⁰² E-mail from Lieutenant Colonel Laura Calese, Pers., Plans and Training Office, Office of The Judge Advocate Gen., to the author (July 7, 2014, 07:09 EST) (on file with the author).

²⁰³ E-mail from Colonel Lorianne Campanella, Associate Judge, U.S. Army Court of Criminal Appeals, to the author (Oct. 3, 2014, 09:46 EST) (on file with author).

²⁰⁴ Oral History, *supra* note 1, at 186. The emphasis on experience over (or in conjunction with) a particularly promising young intellect has been echoed by other senior jurists, including Judge Posner, who has written,

Law attracts some very bright people. But it is not profound. It is one of the simplest professional fields. . . . It's because legal analysis doesn't really cut very deep that young judges are rare. The young are analytically sharper than the old but lack experience. In an analytically weak field, *experience may be essential to successful problem solving*.

POSNER, *supra* note 2, at 354 (emphasis added).

you are a yeller or a screamer, routinely, then you probably ought not to be on the bench. The big thing was common sense. You can't teach that. And if you don't have it you ought not be on the bench. So you looked for things that were goofy or oddball in people's past. I looked at their personnel files. I called people that they practiced in front of to say, what do you think. . . . And I was also looking for people that had promotion potential. . . . People who had a variety of military experiences who had been deputies or officers in charge or staff judge advocates.²⁰⁵

Her efforts in the selection, education, mentoring, and advancement of the right sort of officers for the Army judiciary were informed by her own early experience on the trial court.²⁰⁶ The quality of the military judge Vowell was looking for, whether in the Active Army or the Reserve Component, was someone whose professional and life experience had prepared them for a very different kind of defendant being tried in a system specifically designed for the needs of the military while adhering to the basic tenets of American jurisprudence. As suggested previously, the circumstances that defined many military defendants during 2003-2011, in particular, were unique.

The intersection between military operations and military justice - over 800 Army courts-martial were conducted during this period in deployed environments, compared to only 42 for the Navy and U.S. Marine Corps and 13 for the Air Force - required a different judicial optic from that of the typical county or state judge.²⁰⁷ The idea that military defendants are sometimes different than those in civilian life was memorably captured in the movie *Breaker Morant*²⁰⁸ about the court-martial of a young British officer serving in the Second Boer War accused of the murder of captured enemy soldiers.

The fact of the matter is that war changes men's natures. The barbarities of war are seldom committed by abnormal men. The tragedy of war is that these horrors are committed by normal men in abnormal situations, situations in which the ebb and flow of everyday life have departed and

have been replaced by a constant round of fear and anger, blood and death.

Soldiers at war are not to be judged by civilian rules . . . even though they commit acts which, calmly viewed afterwards could only be seen as unchristian and brutal. . . . we cannot hope to judge such matters unless we ourselves have been submitted to the same pressures, the same provocations, as these men whose actions are on trial.²⁰⁹

The pressures of soldiering described in the movie are accounted for in the character of military panels who may sit in judgment of service members accused of crimes but also in the trial and appellate judges who sit in review of the facts, law and procedure, as well as guilt or innocence and appropriate sentence. The answer to the question Vowell noted previously—"how is it going to feel when you have this young sergeant standing in front of you with some combat ribbons on his chest and you're about to sentence him to jail for twenty or more years. How are you going to do that?"²¹⁰—is that the officers the Army assigns to its judiciary will have the experience and the perspective required to do so. She worked tirelessly to ensure that was the case.

She reminded her officers that "the best decisions are the ones that tell a story in a way that others can understand what happened and how it got decided. If it wasn't close then say so."²¹¹ To do this she advised judges to acquire skills like writing out the facts before making rulings, circulating decisions to solicit criticism, and to generally avoid ruling from the bench.²¹²

Vowell also considered the structure of the judiciary itself. As previously noted, she spent considerable time working, empowering, and integrating the Reserve Component judges into the Army judiciary, many of whom had considerable experience through their civilian practices. She worked with the Chief Trial Judges from the other services to detail Army judges to Navy/Marine and Air Forces cases, and vice versa. For example, Vowell personally tried a case for the U.S. Coast Guard (a vessel hazarding case) where she noted the different service cultures and how that might one day inform a joint judiciary, which she believed could work at the appellate level but not the trial courts, which are heavily influence by specific traditions, norms, and regulations.²¹³ She also felt that there was merit to an enhanced institutional military judiciary, which although not an Article III court could be built

²⁰⁵ Oral History, *supra* note 1, at 186–87.

²⁰⁶ Vowell Interview, *supra* note 10.

²⁰⁷ FINAL REPORT, *supra* note 186.

²⁰⁸ BRUCE BERESFORD & DAVID STEVENS, *BREAKER MORANT* 1980, available at http://books.google.com/books/about/Breaker_Morant.html?id=GADsAAAAMAAJ (last visited Oct. 3 2014). See also GEORGE WITTON, *SCAPEGOTS OF THE EMPIRE: THE TRUE STORY OF BREAKER MORANT'S BUSHVELDT CARBINEERS* (2009); Lieutenant Commander David D. Furry, *Scapegoats of the Empire, The True Story of Breaker Morant's Bushveldt Carbineers*, 192 MIL. L. REV. 127 (2007).

²⁰⁹ BRUCE & STEVENS, *supra* note 208.

²¹⁰ Oral History, *supra* note 1, at 114.

²¹¹ Vowell Interview, *supra* note 10.

²¹² Oral History, *supra* note 1, at 186–87.

²¹³ Vowell Interview, *supra* note 10.

through a combination of rotating tenured assignments and a permanent cohort akin to the permanent professors appointed to serve six or more years at the U.S. Military Academy.²¹⁴

She was not alone in the openness to a more civilianized military judiciary. In 2001, the year she became the Chief Trial Judge, the National Institute for Military Justice sponsored a high-profile look at the role of the commander within the military justice system that recommended, among other things, a judiciary that was far more static and empowered.²¹⁵ Led by Walter T. Cox, III, a former Judge of the Court of Appeals for the Armed Forces, the “Cox Commission” made a series of recommendations for reform of the system including the establishment of a standing judiciary of tenured judges rather than courts convened by commanders on an ad hoc basis.²¹⁶ The Commission also argued for a migration of key powers held by convening authorities to the judiciary, including the approval of expert witnesses,²¹⁷ pretrial petitions,²¹⁸ and assistance to pre-trial investigative hearings,²¹⁹ as well as the random selection of panel members.²²⁰

Short of such a holistic change in the military justice system, Vowell and others like her worked tirelessly to make the existing system fulfill its promise of justice through a highly effective, impartial, and talented cohort of military judges. In the years that followed, the Army made extraordinary gains, for example, in the selection, training, and resourcing of special victim prosecutors and special victim advocates in case involving sexual assault or abuse. The trial counsel and trial defense advocacy programs for prosecution and defense bars within the Army have never been stronger. It is a tribute to Vowell’s efforts (and those like her) over many years, in shaping a professional culture where enormously gifted and experienced Army lawyers are integrated into the judiciary with the same selectivity as those who advised the commanders who convened their courts.

Thoughts on Women in the Army JAG Corps

*I never thought of myself as different. . . . My observation really, in those early days, is that if you could do the job you were accepted. I think you really had to demonstrate you could do the job, whereas a fellow might be able to goof off a little As a woman I felt that I must do my very best at all times, maybe not to let [other females] down, or let my folks down, or let anybody down really So I tried to do my best, but I found acceptance wherever I went, really. If you were competent, people didn’t worry about what gender you were.*²²¹

—Colonel Elizabeth R. Smith, U.S. Army,
The First Female Colonel of the Army JAG Corps

Any consideration of Denise Vowell’s service would be incomplete without at least a passing mention of the era in which it occurred. In the mid-1970s, a defining characteristic of her early career was that it happened at a time with very few female mentors or peers. It is hard to imagine, when women are leading at the strategic three and four star-level and currently serve as The Judge Advocate Generals for the Army and the Navy, that Vowell’s promotion to the rank of major in 1986 made her one of only fourteen female field grade officers in the Army JAG Corps.²²²

Of those fourteen, three were lieutenant colonels and the rest were majors. There were no female active duty Judge Advocate colonels, and no general officers regardless of component or military service. At the time of her early promotion to lieutenant colonel in 1992, she was one of only five women serving in that rank among approximately 209 men. By the time she was promoted to colonel in 1997, she was one of only three of 126. In contrast, seventeen years later, there are twenty-four (of approximately 146) female colonels serving as the senior leaders in some of the most complex commands in the Army.²²³

²¹⁴ *Id.* See generally 10 U.S.C. 403 (2006) (U.S. Military Acad., Section 4336, Permanent professors; director of admissions). See also Clyde Tate & Gary Holland, *An Ongoing Trend: Expanding the Status and Power of the Military Judge*, ARMY LAW., Oct. 1992, at 23.

²¹⁵ COX COMM’N, NAT’L INST. OF MILITARY JUSTICE, REPORT OF THE COMMISSION ON THE 50TH ANNIVERSARY OF THE UNIFORM CODE OF MILITARY JUSTICE 2 (May 2001) [hereinafter COX COMM’N], available at http://www.loc.gov/r/rfd/Military_Law/pdfCox-Commission-Report-2001.pdf (last visited Sept. 19, 2014). See generally Eugene R. Fidell, *A World-Wide Perspective on Change in Military Justice*, 48 A.F. L. REV. 195, 195–96 (2000).

²¹⁶ COX COMM’N, *supra* note 213, at 8–9.

²¹⁷ *Id.* at 7–8.

²¹⁸ *Id.* at 5.

²¹⁹ *Id.* at 8–9.

²²⁰ *Id.* at 6–8.

²²¹ Lieutenant Colonel George R. Smawley, *The First Female Colonel of the U.S. Army Judge Advocate General’s Corps: A Summary and Analysis of The “Oral History of Colonel Elizabeth R. Smith Jr. (USA Retired) (1951–1978)”*, 179 MIL. L. REV. 171, 186 (2004) (citing the Oral History of Colonel (COL) Elizabeth R. Smith, Jr., United States Army (Retired) (1951–1978), at 23 (Jan. 1989) (unpublished manuscript, author unknown, on file with The Judge Advocate General’s Legal Center and School (TJAGLCS) Library, U.S. Army, Charlottesville, Va.).

²²² Oral History, *supra* note 1, at 105. She recalls: “I was at government appellate division when I was selected for promotion to major. There were 10 women in the zone, seven were selected. That selection doubled the number of women field grade officers in the JAG Corps. Doubled.” *Id.*

²²³ JUDGE ADVOCATE PUB. 1-1, JAGC PERSONNEL AND ACTIVITY DIRECTORY (1985–1986, 2013–2014) (Office of The Judge Advocate Gen., Dep’t of the Army) (on file with author). These include Army Forces Command (Colonel Vanessa Berry), Training and Doctrine Command (Colonel Sharon Riley), Installation Command (Colonel Marian Amrein), the Joint Staff (Colonel Michelle Ryan), U.S. Army Africa (Colonel Daria Wollschlaeger) and three combat divisions—1st Armor Division and Fort Bliss (Colonel Karen Carlisle), 1st Cavalry Division (Colonel Alison Martin), and the 101st Airborne Division (Air Assault) and Fort Campbell (Colonel Susan Arnold). Other key leadership positions occupied by female senior leaders include The Army’s Chief Trial Judge (Colonel Tara Osborn), Director of the Judge Advocate Legal Center (COL Tania Martin),

Vowell's varied career pattern was not what many might expect for a successful Army lawyer, a fact she readily admits.

If you take all of the wrong answers to the question of "what are career enhancing jobs," that was my career pattern as a JAG before I was selected below-the-zone for lieutenant colonel. Assignments are what you make of them. Some of it is also who you work for. I'll give you an example. I had two children in my first assignment. One of my basic course classmates was a woman who had a perfect LSAT score, who was selected out of the Transportation Corps for the FLEP program. . . . She was the number one graduate from her graduate course and then she was passed over for major. So I called her up and said, "what happened?" And she said, "I had two children and I worked for a staff judge advocate who didn't think I belonged in the Army much less the JAG Corps, as a result." . . . So those are some of the luck of the draw.²²⁴

But Vowell also attributes some of the early struggles of women in the Army JAG Corps, and perhaps more broadly the Army itself, as a function of long-held stereotypes toward not only women in the military but also toward the positions they held and the jobs they did—that they were not real Soldiers, and even if they were their contribution was limited to less glamorous roles in combat service support. This idea—that not all Soldiers are created equal—extends to the success and desirability of positions on the trial judiciary, as well. She notes,

So unless you put people on promotion board who are diverse, you don't get a diverse selection. And unless you see people doing the jobs you don't think you can aspire to those jobs. Fred Clervi once told me that the year I became a trial judge and then left the judiciary and went off to become a division SJA, he had triple the number of applicants for trial jobs. Because you see something good – that the job is desirable and leads to advancement – and that is how the JAG Corps functions. We look at what jobs people get and where they came from. . .²²⁵

the Executive Officer for the U.S. Army Legal Services Agency (Colonel Mary Bradley), and the Administrative Law and International & Operational Law division chiefs for the Office of The Judge Advocate General (Colonel Jody Hehr and Colonel Jane Ellen Bagwell, respectively).

²²⁴ Oral History, *supra* note 1, at 102–03.

²²⁵ *Id.* at 107.

As a military judge she expressly recalls a female deputy staff judge advocate, a major, seeking guidance regarding the perception that her staff judge advocate would not assign women to brigade trial counsel positions or send them to the operational law courses because of their sex, and of the impact on advancement and opportunity that this might have.²²⁶ On the other hand, she also recalls the efforts by others to open up all positions based on merit and ability. In particular she remembers in the late 1990s when Major General John Altenburg would tell audiences at the Judge Advocate General's School that "there is no job in the JAG Corps a woman cannot do,"²²⁷ and what a change it was for the leadership to address the integration issue publicly.

In her own way, Vowell and others worked quietly to afford mentoring and collegiate opportunities to the growing cohort female officers in the JAG Corps. One particular effort arose from a remark by a male lieutenant colonel at the Government Appellate Division to the effect that a small group of female officers going to lunch were "plotting" like hens in a coop. From that came "hen luncheons" and dinners, where female judge advocates came together as an informal mentoring group from across the Washington, DC area to liaise and socialize in a way many of them never could in the early years of their careers.²²⁸

Conclusion

Vowell retired from the Army in early 2006, after nearly five years as the Chief Trial Judge, including over a year as a retiree-recall (beyond the mandatory 30 years of service). She declined the offer of a sixth full year to accept a position as a Special Master for the U.S. Court of Federal Claims, where her judicial, academic, and torts experience made her ideally suited for the job that attempts to resolve disputes and keep people out of civil court.²²⁹ She was sworn in there on February 1, 2006.²³⁰

She had once hoped to walk the Appalachian Trail when she retired, and no doubt still will, but that journey had to wait. In military retirement, or what passed for it given her work with the Court of Claims, she missed most the camaraderie of old friends and interactions with young captains, and the opportunities to mentor and coach and train.²³¹ And despite nearly a decade of time and distance between now and the Army she left, she remains concerned about its future and of the practice of military law.

²²⁶ *Id.* at 108.

²²⁷ *Id.* at 109.

²²⁸ Vowell Interview, *supra* note 10.

²²⁹ Oral History, *supra* note 1, at 175, 177.

²³⁰ *Id.* at 176. Denise Vowell was appointed as Special Master on 1 February 2006. She was designated Chief Special Master by the court to succeed Patricia E. Campbell-Smith, effective 19 September 2013.

²³¹ *Id.* at 188.

She sees, in some ways, an Army akin to the post-Vietnam force she entered in the 1970s that was divided by those who had combat experience, and what it means for a cohesive force and mutual understanding of what those experiences meant, and what they did not.²³² Vowell is reminded of what a tired Army looks like, and of the need to teach those without the benefit of combat experience its lessons, while simultaneously transitioning to a force from an operational setting to one focused on generating the leadership and skills required grow future leaders, run units, installations, and the institutional Army.²³³

Vowell wishes, for example, she had time to do more to advocate the establishment of Veterans courts qualified to address post-traumatic stress disorder defenses, and assist deserving veterans with the benefit of adjudicative forums educated and enabled to assist them with the challenges they face with combat-related misconduct.²³⁴ Vowell reminds us in the waning era on combat operations in Southwest Asia, that, “Maybe we need to sit down and think about what did we learn from Vietnam and how did we handle. . . .” the repercussions of an Army weary of war and needing to reset itself.²³⁵

As for how she is remembered, as the young woman from Holly, Michigan, who went to law school and joined the Army in the early 1970s at a time when opportunities were starting to open up for women, if only just, Vowell looks on her leadership and service within the judiciary as her greatest professional accomplishment—her contribution to its heightened esteem.²³⁶ As for the rest, she remains satisfied with things she achieved and the bit of balance she found along the way, and “was glad I took the time to spend at my kids’ football games and doing scouting with my daughter and then with other people’s daughters and sons” One day, perhaps, she may take them on that much deferred hike up the Appalachian Mountains, and tell the stories of what it was like to be a female Soldier in the 1970s, a key leader of an Infantry division in Bosnia, and a judge who meted justice in peace and war while lifting up others to do the same.

²³² *Id.* at 192–93.

²³³ *Id.* at 193.

²³⁴ *Id.* at 193–94.

²³⁵ *Id.* at 195.

²³⁶ *Id.* at 206.